TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~312.~~ 114

HENRY STAGG, PLAINTIFF IN ERROR,

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

FILED DECEMBER 6, 1869.

12

SUPREME COURT OF THE UNITED STATES.

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1 MISSOURI DISTRICTS, *sct:*

Pleas before the honorable the circuit court of the United States for the districts of Missouri, at the April term thereof, A. D. 1869.

THE CONNECTICUT MUTUAL LIFE INSURANCE CO., plaintiff,
against
HENRY STAGG, DEFENDANT.

Be it remembered that heretofore, to wit, on the seventh day of September, A. D. 1868, there was filed in the office of the clerk of the circuit court of the United States for the districts of Missouri, the following declaration, to wit:

Declaration.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri, October term, 1868.

The Connecticut Mutual Life Insurance Company, which is a corporation created by virtue of the laws of the State of Connecticut, and a citizen of said State, complains of Henry Stagg, who is a citizen of the State of Missouri, of a plea of trespass on the case on promises:

2 For that whereas heretofore, to wit, on the twenty-seventh day of July, A. D. 1864, at the city of St. Louis, to wit, at the districts aforesaid, the said defendant was indebted to the said plaintiff in the sum of twelve hundred and forty $\frac{67}{100}$ dollars, for money then received by said defendant to the use of the said plaintiff, and for other money found to be due from the said defendant to the said plaintiff upon an account then stated between them, and in consideration thereof then and there promised the plaintiff to pay unto it the several moneys aforesaid upon demand; yet, nevertheless, the said defendant has never paid any of said moneys, although often requested so to do, but has refused and now refuses and wholly neglects so to do, to the damage of said plaintiff in the sum of five thousand dollars; and therefore it brings this suit.

KRUM, DECKER & KRUM,
Att'ys for Pl'ff.

Upon which declaration the following summons was issued:

Summons.

MISSOURI DISTRICTS, *sct:*

The President of the United States of America to the marshal of the eastern district of Missouri, greeting:

You are hereby commanded to summon Henry Stagg, a citizen of the State of Missouri, that he be and appear before the honorable circuit court of the United States for the districts of Missouri on the
3 first day of the next term thereof, to be holden at the city of St. Louis, in & for said districts, on the first Monday of October

next, then and there to answer unto the Connecticut Mutual Life Insurance Company, citizens of the State of Connecticut, in a plea of trespass on the case on promises, to the damage of the said plaintiffs five thousand dollars. Hereof fail not, and have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the seventh day of September, A. D. eighteen hundred and sixty-eight. Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

{SEAL.} BEN. F. HICKMAN,
Clerk of said Court.

And upon said summons the marshal of the United States for the eastern district of Missouri made the following return, to wit:

Marshal's return.

UNITED STATES OF AMERICA,
Eastern District of Mo., ss:

Executed by reading the within summons and copy of declaration to the within-named Henry Stagg.

St. Louis, Mo., Sept. 8th, 1868.

J. B. ROGERS,
U. S. Marshal Eastern District.

4 And afterwards, at a regular stated term of the circuit court of the United States for the districts of Missouri, begun and holden at the city of St. Louis, in said districts, on Monday, the 5th day of October, A. D. 1868, the following proceedings took place on Wednesday, the 14th day of October, in said year, to wit:

Order of continuance.

THE CONNECTICUT MUTUAL LIFE INSURANCE Co., plaintiff,
ag'st
HENRY STAGG, DEFENDANT. } Assumpsit.

Ordered, That this case be now continued until the next term of this court.

And afterwards, at said regular stated term of said circuit court begun and holden as aforesaid, the following further proceedings took place in this case on Friday, the sixteenth day of October, in said year, o wit:

Order of continuance set aside.

THE CONNECTICUT MUTUAL LIFE INSURANCE Co., plaintiff,
ag'st
HENRY STAGG, DEFENDANT. } Assumpsit.

This day come the parties by attorneys, and by consent it is ordered that the order of continuance heretofore entered in this case be, and the same is hereby, now set aside; and thereupon the said defend-
5 ant, by attorneys, with the leave of the court, files his plea of

non assumpsit and a special plea to the action of plaintiff herein against him, to which special plea the said plaintiff, by attorney, files its demurrer.

And said plea of non assumpsit & special plea are in the words and figures following, to wit:

Special plea, non assumpsit.

UNITED STATES OF AMERICA,
District of Missouri, ss:

In the circuit court of the United States for the district of Missouri, October term, 1868.

THE CONNECTICUT MUTUAL LIFE INSURANCE Company
vs.
HENRY STAGG.

And the said Henry Stagg, by P. E. Bland, his attorney, comes and defends the wrong and injury when, &c., and saith that he did not undertake or promise in manner and form as the said Connecticut Mutual Life Insurance Company hath above thereof complained against him; and of this he puts himself upon the country, &c.

And the plaintiff doth the like.

2d plea.

And for a further plea in this behalf, the said Henry Stagg, by leave of the court here first had and obtained, according to the statute in such case made and provided, says that the said Connecticut Mutual
6 Insurance Company ought not to have or maintain its aforesaid action thereof against him, because, he says, that the said Connecticut Mutual Life Insurance Company, to wit, on the 26th day of September, A. D. 1849, at the city of Hartford, in the State of Connecticut, employed the said Henry Stagg to represent the said insurance company as an agent of the said company at the city of St. Louis, in the State of Missouri, in the business of obtaining risks on lives in said city, and in the issuance of policies upon taking said risks and renewals thereof; and in consideration thereof the said insurance company promised to allow and pay to him a commission of ten per cent. on the first premiums (cash & notes) and five per cent. on all subsequent renewal premiums so long as he, the said Henry Stagg, should continue such agent of said company, and that he should continue such agent of said company so long as he conducted its business faithfully and in a business-like and proper manner; and that the said Henry Stagg, in consideration of the said employment and promises, accepted the said employment and entered upon the duties of the said agency, at the said city of St. Louis, and conducted the same and the said business with fidelity and in a busi-
ness-like and proper manner, and greatly to the benefit and profit of
7 the said insurance company, and had obtained a great many risks for the said insurance company upon which it had issued policies, and continued so to conduct the said agency and so to discharge its duties until about, to wit, the 27th day of May, 1864; at which time, without any sufficient cause, and against the wishes of the said Henry Stagg,

and although he was ready and willing to continue to discharge the duties of said agency in manner aforesaid, the said Connecticut Mutual Insurance Company, disregarding its said promises, discharged him, the said Henry Stagg, from its said employment, and took from him the said agency, and thereby prevented him from earning and receiving the commissions it had agreed to pay and allow him on all renewal premiums on risks theretofore obtained by him and policies issued by it, the said company, to wit, one hundred and sixty-six in number, then in force and earning commissions for said company, to the damage of the said Henry Stagg in a large sum of money, to wit, in the sum of five thousand dollars, which said sum of money in which the said Henry Stagg has been so damaged by the said Connecticut Mutual Life Insurance Company exceeds the alleged damages sustained by the said Connecticut Mutual Insurance Company by reason of the non-performance by him, the said Henry Stagg, of the said several supposed promises & undertakings in said declar-
8 ation mentioned, which said damages suffered as aforesaid by the said Henry Stagg arise out of the same business relations and transactions as the said supposed damages in said declaration alledged to have been suffered by the said insurance company by reason of the supposed non-performance by the said Henry Stagg of the said several supposed promises and undertakings in said declaration mentioned; that is, the said alleged indebtedness of the said Henry Stagg unto the said insurance company mentioned in said declaration, if any such there was, arose out of the said Henry Stagg's conduct of the said agency; and the said Henry Stagg is ready and willing, and hereby offers, to recoup the said damages so suffered by him against the damages in said declaration alledged to have been suffered by said Connecticut Mutual Life Insurance Company, according to the form of the statute in such case made and provided, and this the said Henry Stagg is ready to verify. Wherefore he prays judgement if the said Connecticut Mutual Insurance Company ought to have or maintain its aforesaid action thereof against him, &c.

P. E. BLAND,
Att'y for Def't.

And the demurrer to said special plea filed as aforesaid is in the words and figures following, to wit:

9 *Demurrer to 2d plea.*

THE CONNECTICUT MUTUAL LIFE INSURANCE CO.
vs.
HENRY STAGG.

The plaintiff in this cause comes, &, as to the said plea of the defendant by him secondly above pleaded, says that the matters therein contained in manner & form as the same are above pleaded & set forth in said second plea, are not sufficient in law to bar or preclude the plaintiff from having its aforesaid action thereof against the defendant, and that the said plaintiff is not bound by law to answer said second plea. Wherefore, by reason of the insufficiency of the said second plea, the plaintiff prays judgment, &c.

KRUM, DECKER & KRUM,
Att'ys for Pl'ff.

And afterwards, at said regular stated term of said circuit court

begun and holden as aforesaid, the following further proceedings took place in this case on Tuesday, the 20th day of October, in said year, to wit:

Plea withdrawn & leave to file another plea.

THE CONNECTICUT MUTUAL LIFE INSURANCE CO., plaintiff, *ag'st* HENRY STAGG, DEFENDANT. } Assumpsit.

This day come the parties by attorneys, and, by consent of attorneys in writing filed, the said defendant, by attorney, with the leave of the court, withdraws the pleas heretofore filed by him herein, and files other and different pleas to the action of plaintiff herein against him.

Which consent in writing, filed as aforesaid, is in the words and figures following, to wit:

Consent given to withdraw pleas, & leave given to file another.

CONNECTICUT MUTUAL LIFE INS. CO. *vs.* HENRY STAGG.

We consent that the defendant may withdraw pleas heretofore filed in this cause, & that he may file another plea & notice instanter.

KRUM, DECKER & KRUM,
For Pl'ffs.

And the other and different pleas filed by the defendant as aforesaid are in the words and figures following, to wit:

Plea.

UNITED STATES OF AMERICA,
District of Missouri, ss:
In the circuit court of the United States for the district of Missouri, Oct. term, 1868.

HENRY STAGG *ats.* THE CONNECTICUT MUTUAL LIFE INSURANCE Company.

And the said defendant, by P. E. Bland, his attorney, comes and defends the wrong and injury when &c., and saith [and saith] that
11 he did not undertake or promise in manner and form as the said plaintiff hath thereof above complained against him; and of this the said defendant, Henry Stagg, puts himself upon the country, &c.

P. E. BLAND,
Att'y for Def't.

And pl'ff doth the like.

Notice—recoupment.

In the circuit court of the United States for the district of Missouri, October term, 1868.

BETWEEN THE CONNECTICUT MUTUAL LIFE Insurance Company, plaintiff,
and
HENRY STAGG, DEFENDANT.

Messrs. KRUM, DECKER & KRUM:

Take notice that the above-named defendant, on the trial of this cause, will give in evidence and insist that the said plaintiff, on the 26th day of September, A. D. 1849, at the city of Hartford, in the State of Connecticut, employed the said defendant in the capacity of an agent of the said plaintiff to represent it in conducting and carrying on its business at the city of St. Louis, in the State of Missouri; to continue such agent so long as the said defendant should so desire, and should conduct the business of the said plaintiff thereunder with fidelity, and in a business-like and proper manner; and, in consideration thereof, the said plaintiff promised to allow and pay to the said defendant a
12 commission of ten per cent. on the first premiums (cash & notes) obtained by said defendant for said plaintiff, under said agency, and five per cent. on all subsequent renewal premiums obtained as aforesaid, so long as the said defendant should continue such agent of said plaintiff; that the said defendant accepted and immediately entered upon the duties of the said agency, and continued to discharge the duties thereof with fidelity, and in a business-like & proper manner, until and up to about the 27th day of May, A. D. 1864, and was then willing and ready, and so desired, to continue to discharge said duties in the manner aforesaid; that, by dint of much effort and great expense, he had procured a large amount of business for the said plaintiff, upon which it was and now is earning large premiums as renewal premiums, and upon which, under the said contract of employment, the said defendant is entitled to earn and receive five per cent. per year, as the policies may be annually renewed, upon which such premiums accrue and has been so entitled ever since the said 27th day of May, A. D. 1864; that about the said 27th day of May, A. D. 1864, the said plaintiff, disregarding its said promises, without just cause and against the wishes or consent of the said defendant, and in violation of said con-
13 tract of employment, wrongfully put an end to the said agency by withdrawing the same and all the business thereof from the said defendant & turning the same over to another person, and thereby the said plaintiff prevented thenceforward the said defendant from continuing to be said agent, wrongfully and without his consent, and from earning and receiving the said five per cent. commissions per annum upon all the renewal premiums upon the said business accumulated as aforesaid, greatly to the damage of the said defendant, to wit, in the sum of five thousand dollars; that any demand of this said plaintiff, to be proved on the said trial, grew out of the said defendant's administration and conduct of the said agency, and the business transacted thereunder, under and by virtue of the said contract of employment, and not otherwise; and that the said defendant will set off or recoupe so much of the said sum on the trial of the said cause against any demand of the said plaintiff, to be proved on the said trial, as will be sufficient to satisfy and discharge such demand, and pray judgement in favor of said

defendant against said plaintiff for the balance thereof, according to the form of the statutes in such case made and provided.

Yours, &c.,

P. E. BLAND, *Att'y for Def't.*

14 And afterwards, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings took place in this case on Thursday, the 29th day of October, in said year, to wit:

Order of continuance.

THE CONNECTICUT MUTUAL LIFE INSURANCE Co., plaintiff, *ag'st* HENRY STAGG, defendant. } Assumpsit.

Ordered, That this case be now continued until the next term of this court.

And afterwards, at a regular stated term of said circuit court, (at the April term thereof, 1869,) the following further proceedings took place in said case on Monday, the 12th day of April, A. D. 1869:

THE CONNECTICUT MUTUAL LIFE INSURANCE Co., plaintiff, *ag'st* HENRY STAGG, DEFENDANT. } Assumpsit.

This day comes the defendant by attorney, and withdraws notice heretofore filed herein, and substitutes therefor another notice in writing, and the parties, by attorney, file an agreement in writing waiving a jury in this case, and consenting and agreeing that this case may be tried by the court without the intervention of such jury.

15 Which agreement of waiving a jury in this case, filed as aforesaid, is in the words and figures following, to wit:

Consent to waive a jury.

CONNECTICUT MU. LIFE INSURANCE CO. *vs.* HENRY STAGG.

By consent a jury is waived in this case, April 9th, 1869.

KRUM, DECKER & KRUM, *for Pl'ff.*
BLAND & THORNTON, *Att'y for Def't.*

And the notice substituted for the one withdrawn by consent, and filed as aforesaid, is in the words and figures following, to wit:

Notice substituted for the one withdrawn.

In the circuit court of the United States for the district of Missouri, April term, 1869.

BETWEEN THE CONNECTICUT MUTUAL LIFE Insurance Company, pl't'ff, *and* HENRY STAGG, DEFENDANT.

Messrs. KRUM, DECKER & KRUM, *Plaintiff's Attorneys:*

Take notice that the above-named defendant, on trial of this cause,

will give in evidence and insist that the above-named plaintiff before and at the time of the commencement of this suit was, and still is, indebted to the said defendant in the sum of five thousand dollars, lawful money of the United States, for that, on the 13th day of October,
16 A. D. 1848, the said plaintiff employed the said defendant as its agent to conduct its business of life insurance, at the city of St. Louis, in the State of Missouri, and agreed to pay the said defendant for his services as such agent ten per cent. commission on the premiums, with one dollar for each policy, and a commission of five per cent. on the premium of all renewals of policies, in the case of all policies effected through such agent; that, in consideration of said agreement and promise by the said plaintiff to pay him the said commissions, the said defendant accepted the said employment and said agency, and proceeded, at the request of the said plaintiff, and in the discharge of the duties of said employment and agency, at his great labor and expense, to work up and enlarge the business of the said plaintiff, and procured a great many customers of the said plaintiff, to whom a great many policies of life insurance were through his agency issued, and great premiums earned & received by said plaintiff to its great profit & advantage; and the said plaintiff continued until and up to the 8th day of June, A. D. 1864, to allow & pay to the said defendant, in accordance with said agreement and promise, the said ten per cent. commission on all first premiums, and five per cent. on all renewal premiums, upon poli-
17 cies issued to its customers through his agency; but from that time to the present it has disallowed and refused to pay said commissions on said premiums, or any part thereof, to said defendant, all of which said premiums the said plaintiff, directly or through its agents, has received. At the said 8th day of June, A. D. 1864, there were a large number of policies issued by the said plaintiff to its customers, through said agency of the said defendant in force, and upon which large amounts of renewal premiums and interests on premium notes were payable annually, and have been annually paid to said plaintiff, amounting in the agregate to the sum of, to wit, one hundred thousand dollars, so payable and paid between the said last-mentioned date and the date of the commencement of this suit, a schedule of which said policies upon which said premiums have been paid as aforesaid, showing their numbers, dates, amounts, to whom issued, and the amounts of renewal premiums which have been paid respectively, is hereto annexed and marked "A," and made part hereof; in all of which said renewal premiums the said defendant, by reason of the said employment and the said agreement and the promise of said plaintiff, had and now has a vested interest of five per cent. upon said premiums and said interest, which the said plaintiff, under the said contract of employment, is obligated to al-
18 low and pay to the said defendant, yet, nevertheless, the said plaintiff, though requested so to do, has failed and refused to pay over to the said defendant the said five per cent., to which he is entitled as aforesaid, upon all the said renewal premiums and said interest paid to the plaintiff as aforesaid, and which amounts in agregate to the sum of, to wit, ($5,000,) five thousand dollars, which was at the time of commencement of this suit, and still is, due & owing from the said plaintiff to the said defendant; and that the said defendant will set off and allow to the said plaintiff on the said trial so much of the said sum of five thousand dollars so due and owing from said plaintiff to said defendant against any demand of the said plaintiff, to be proved on trial, as will be sufficient to satisfy and discharge such demand, and for the balance thereof, the said defendant will ask judgement of said court

in his favor, according to the form of the statute in such case made and provided.

BLAND & THORNTON,
Att'ys for Def't.

We consent that the notice previously filed in this case by defendant may be withdrawn, and this notice may be filed instead of the former.

19 April 9th, 1869.

KRUM, DECKER & KRUM,
Att'ys for Pl'ff.

SCHEDULE A.

Statement of policies issued by the Connecticut Mutual Life Insurance Company in force June 8th, 1864, and thenceforward to the present, through the agency of Henry Stagg.—To premium & renewals on policies received.

No. of policy.	Life insured.	Am't of premium.	Interest.
24208	Henry Stagg	160	19 20
25777	Geo. W. Summers, jr	58 75	3 52
16675	A. F. Barrett	79 20	9 50
18724	Geo. K. Budd	264 50	31 74
4796	Dan'l Cummings	62 20	7 46
22634	Z. S. Mitchell, including Texas permit, $50	225 50	21 06
4799	Sam'l F. Dolman	95	11 40
14655	S. J. P. Anderson	140 50	16 86
18762	Ja's L. Benson	82 75	9 93
18761	Rob't Fisher	98 30	17 87
10081	W'm K. Wilson	84 90	10 11
4961	W'm Shion	132	15 84
5003	Mary T. Sheely	62 50	7 50
1377	Albert D. Wellee	56	6 96
4991	Ja's Van Nurse, jr	97 20	11 66
24307	Reuben Beardsblee	275	24 75
21062	R. H. Whittaker	87	10 44
22700	Sam'l D. Porter	87 75	10 53
20			
4277	Jos. M. Brown, southern permit	20	.....
14841	A. Johnson	54 25	.....
5129	Albert D. Wellee	61	7 32
17857	E. O. Goodman	64	7 68
14956	Clenghan Scott	137 50	16 50
5227	S. Y. McMaster	56 20	6 74
21771	..... do.	111 90	13 42
17883	Sam'l D. Porter	56 20	6 74
24440	Home Ins. Co., N. Y., on life of L. Shepperd	51 85	4 66
24447	Shebnah Rich	56 20	5 05
20372	W'm H. Kaval	145	17 40
15028	Jonathan Jones	152 50	18 30
16813	R. H. Cole	137 50	16 50
15044	Ja's L. Benson	76 25	9 15
21828	J. W. Bissell	160	19 20
5513	J. M. Randall	67 20	8 06
5525	T. M. Post	77 75	9 33
5594	Henry Meyers	118	14 16
21862	Dan'l R. Whitmore	61 60	7 39
20416	Henry Hend	140 50	16 86
15187	G. W. Dreyer	181 50	21 78
22870	C. W. Lambeth	111 90	13 42
5748	Cha's D. Drake	152 52	18 30
24563	F. H. Schroeder	66 20	5 95
19741	R. W. Ulrice	137 50	16 50
5801	Geo. P. King	50	6
22879	A. G. Bragg	225 50	27 06
22907	David Cartan	266 50	31 95
5831	Tho's H. Griffith	77 10	9 25
22911	Benj. H. Batte	145	17 40

21			
		16 05	.....
21091	Geo. K. Budd	61 65	1 85
27549	J. C. Bywater	64 25	7 71
22922	Elijah Wells	137 50	16 50
15998	James H. Comfort	117 50	14 10
22942	Peter Behr	61	7 32
5884	Lesley Garnett	97 20	11 64
1849	L. C. Dudley	140 50	12 63
24685	W'm Haslett, favor Cha's Tillman	52 75	6 32
11416	E. H. Gregory	108 50	13 06
11485	J. B. S. Lemoine	8 60	.....
22261	Sam'l F. Dolman	54 90	3 28
26119	W'm H. Golding	568	51 12
24764	Charles Tillman	102	12 24
6187	Joseph O. Boggs	181 50	21 78
23055	Geo. Pegram	82 50	9 90
6207	W'm N. Benton	145	13 05
24809	Barton Able	320	38 40
23057	Jules Vallee	214	19 26
24843	Sam'l T. Glover	198 40	15 40
23102	W'm H. Belcher	135 30	8 11
26067	John H. Barnard	68 75	8 25
23131	E. H. Gregory	61 20	7 34
6604	Shebnah Rich	51 20	6 14
23234	Henry Meyers	89	10 68
23285	A. M. Garnett	69 30	8 31
23320	John M. Pearson	86 40	10 36
6911	J. H. & Almira T. Britton	68	8 16
23378	J. H. Britton	140 50	16 86
2722	Ja's G. McPhaters	68 00	8 16
2806	H'y F. Clark		
22			
		64 25	6 51
2805	Geo. J. Barnett	373	44 76
23440	Jo's E. Elder	56 20	6 74
2962	E. O. Goodman	23 12	.....
		50	.....
33656	John W. Stephens	121 70	14 60
23458	Russell F. Lamb	136	16 32
18264	Cha's J. Wilson	132	15 84
23465	Delea C. Rich	58	6 96
17353	Jos. F. Richardson	152 50	18 30
3396	Cha's D. Ellis	121 50	14 58
3147	R. C. Werrick	91	10 92
3146	Mary E. Werrick	152 50	18 30
3194	Sarah B. Fagin	145	17 40
3150	A. W. Fagin	122 85	14 71
3374	Sarah E. Graham	112	13 44
3458	Ja's L. Papin	70 20	8 42
3455	Tho's Jones	155 50	18 66
22282	Elbridge Goddard	72 90	8 74
3599	Thomas Ryan	35	4 95
25312	Ellig'th J. Young	102	12 24
22260	Ja's H. Blood	70 20	8 42
123	Silos Farrington	72 90	8 75
21309	N. J. Coleman	65 10	.....
28904	Ja's H. Millard	225 50	.....
34622	E. R. Mason	8 60	.....
22261	S. F. Dolman, on life of Susan Bryant	70 80	8 49
22308	C. B. Fisk	145	17 40
20741	Ja's H. Duffer	66	7 92
8055	John P. Sheilds	68	8 16
17492	F. Levaring	203 10	24 37
17510	N. Ranney		
23			
		50 08	6
8132	Peter H. Holme	57 75	6 93
16309	R. W. Finley	79 20	9 50
23899	Henry J. Coe	53 40	3 20
26584	Mary Forey	152 50	18 30
23709	W'm S. Woods	61	7 32
19376	Thomas Ryan	60 75	7 29
22352	Augustus Maim	170	.....
35106	L. C. Topping	55	6 60
3816	W'm Phenlan	208 20	6 24
22268	E. H. Sheble	338 50	40 62
18476	R. E. Bolton	64	7 68
18498	W'm K. Wilson	160	.....
35524	E. H. Gregory	140 50	16 86
3994	Jno. C. Bull	50 82	6 09
14004	Waid Howard	160	18 20
3995	Sam'l C. Cochran	155 50	18 66
22416	E. W. Bancker	54 90	7 08
4000	Geo. Calhoun	92 50	8 70
17638	Dan'l C. Seltzer	111 90	.....
35773	Jno. C. H. Cunningham		

8862	W'm A. Whiting	160	19 20
21485	S. O. Butler	235 50	28 26
25554	James Ward	193 25 50	17 39
25563	John M Taylor	320	28 80
18577	Benj. Chaless	132	15 84
25640	Isaac H. Sturgeon	160	14 40
4277	Jos. M. Brown	51 40	6 16
18619	Jno. Bunding	155 50	18 66
9269	Jno. E. Brooks	118	14 16
14318	F. A. Kennon	115 50	13 86
24			
36798	F. W. Stephenson	401 50	.....
4396	C. C. Simmons	59	7 08
14453	Sam'l B. McPheeters	75	9
9672	Francis Minor	118	13 96
4498	S. G. Soars	125	15
9654	Sarah M. Williams	125	15
25713	Jno. O. Zaller	64 25	5 78
4551	C. W. Lambeth	55	6 60
24123	C. W. Pomeroy	295	35 40
37337	W'm T. Essex	160	.....
4684	Jno. Ballantine	61	7 32
4683	Geo. W. Outcalt	50 00	6
2838	Geo. J. Barnett	56 20	6 74
4896	W'm D. Wood	63 30	7 59
17793	A. G. Bragg	170	20 40

And afterwards, at said regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings took place in said case on Friday, the 14th day of May, in said year, to wit:

Decree.

THE CONNECTICUT MUTUAL LIFE INSURANCE Company, plaintiff, *ag'st* HENRY STAGG, DEFENDANT. } Assumpsit.

This day came the parties herein by attorneys, and an agreement having been heretofore filed herein waiving a jury in this case,
25 and consenting and agreeing that said case may be tried by the court without the intervention of a jury, and this case being regularly called for trial, and both parties being ready, the said case was thereupon tried by the court, without the intervention of a jury, upon the pleadings and proofs and arguments of counsel, and submitted; and the court, in consideration thereof, and being advised in the premises, finds that the plaintiff is entitled to a judgment in said case, and assesses the damages of plaintiff as against said defendant at the sum of one thousand three hundred and twenty-eight dollars and thirty-one cents.

It is therefore now considered by the court that the plaintiff, The Connecticut Mutual Life Insurance Company, recover against the defendant, Henry Stagg, the sum of one thousand three hundred and twenty-eight dollars and thirty-one cents, ($1,328 31,) the damages so as aforesaid found to be due and assessed by the court, and also the costs in this behalf expended, and that execution be issued therefor.

And afterwards, at said regular stated term of said circuit court, the following further proceedings took place in this case on Saturday, the fifteenth day of May in said year, to wit:

26 THE CONNECTICUT MUTUAL LIFE INS. Co., plaintiff, *ag'st* HENRY STAGG, DEFENDANT. } Assumpsit.

This day comes the defendant by attorney, and files a motion to set aside the finding in this case, and for a new trial herein, upon the grounds and for the reasons set forth in said motion.

Which motion is in the words and figures following, to wit:

Motion for new trial.

UNITED STATES OF AMERICA, *District of Missouri, ss:*

In the circuit court of the United States for the district of Missouri, April term, 1869.

THE CONNECTICUT MUTUAL LIFE INSURANCE Company *vs.* HENRY STAGG.

Now comes the defendant in the above-entitled cause, by P. E. Bland, his attorney, and moves the court to set aside the judgment therein rendered, and grant a new trial thereof for the reasons following, to wit:

1st. The court erred in holding the contract put in evidence by the defendant, bearing date October 13th, 1848, to be revocable at the pleasure of the plaintiff.

27 2nd. Because the court erred in holding that the circular put in evidence by the plaintiff, bearing date September 26th, 1849, operated to revoke the said contract of October 13th, 1848.

3rd. The court erred in holding the said circular to be a contract between the plaintiff and the defendant, and that the defendant was bound by the terms thereof.

4th. The court erred in holding the clause of the said circular, which is in these words, viz: "For your services as above you will be allowed a commission of 10 per cent. on the first premium, (cash and notes,) and 5 per cent. on all subsequent renewal premiums, so long as you continue the agent of the company," to mean that the plaintiff might at its pleasure put an end to the agency and to the defendant's right to commissions on renewal premiums.

5th Because the court erred in improperly rejecting evidence offered by the defendant touching the usage of life insurance companies in relation to the property of their agents in commissions on renewal premiums.

6th. The court erred in admitting in evidence the defendant's bond, offered by the plaintiff against the objection of the defendant.

P. E. BLAND,
Att'y for Def't.

28 And afterwards, at said regular stated term of said circuit court, the following further proceedings took place in said case on Monday, the 17th day of May in said year, to wit:

CONNECTICUT MUTUAL LIFE INSURANCE Co., plaintiff, *ag'st* HENRY STAGG, DEFENDANT. } Assumpsit.

This day came the parties by attorneys, and the court, having exam-

ined the motion filed herein for a new trial, and being advised of and concerning the same, now orders that said motion be, and the same is hereby, overruled.

And afterwards, at said regular stated term of said circuit court, the following further proceedings took place in said case on Wednesday, the 19th day of May in said year, to wit:

CONNECTICUT MUTUAL LIFE INS. CO., plaintiff, *ag'st* HENRY STAGG, DEFENDANT. } Assumpsit.

This day comes the defendant by attorney, and files his bill of exceptions to the finding and rulings of the court in this case; which, being examined and approved by the court, is signed, sealed, and ordered to be made part of the record in this case.

29 Which bill of exceptions filed as aforesaid is in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA, *District of Missouri, ss:*

In the circuit court for the district of Missouri, April term, 1869.

THE CONNECTICUT MUTUAL LIFE INSURANCE Company, plaintiff, *vs.* HENRY STAGG, DEFENDANT.

Be it remembered that at the April term of the said court for the year 1869, on the 13th day of May of the same year, the above-entitled cause came on to be heard in the said court, and then and there came the said Connecticut Mutual Life Insurance Company, the said plaintiff, and the said defendant, Henry Stagg, by their respective counsel, and by writing filed in said court waived a jury in the trial of the said cause, and the same was then and there tried by the said court.

And the said plaintiff, to maintain the issue on his part, read in evidence the following account, to wit:

Henry Stagg to Connecticut Mutual Life Insurance Co.

30

To F. W. Stephenson	premium	$200 75
" C. C. Simmons	"	29 50
" Sam'l B. McPheters	"	37 50
" Francis Minor	"	59 00
" Sunderland G. Sears	"	62 50
" Sarah M. Williams	"	62 50
" John C. Zallie	"	32 12
" Carey W. Lambeth	"	27 50
" Do. Idaho permit	"	50 00
" Chester W. Pomeroy	"	147 50
" W. T. Essex	"	80 00

" John Ballantine	"	30 50
" John W. Outcolt	"	25 00
" Geo. I. Barnett	"	28 10
" W. D. Wood	"	31 65
" A. G. Bragg	"	85 00
" N. F. Barnett	"	39 60
" Dan'l Cummings	"	31 10
" A. Johnson	"	54 25
" Z. S. Mitchell	"	87 75
" Do. for extra Texas permit		50 00
" Elizabeth W. Jennings		52 75
" interest		193 79
" John C. Zallie	note	16 07
" A. G. Bragg	"	56 35
" David Carton	"	66 56
" B. H. Batte	"	36 26
		$1,712 75
" excess of interest over dividends		5 60
		$1,718 35

31 $1,718 35

PER CONTRA.

By com'n on $767 @ 10%	$76 70		
Less overcharge on $100	5 00		
		$71 70	
" com'n on $1,881 69 @ 5%		94 08	
" postage		1 00	
" 4 medical examinations		12 00	
" cash paid C. W. Ellis, general agent		100 00	
" " " premium on policy 22634		159 76	
			438 54
Bal			$1,279 81

of monies belonging to the plaintiff received by the defendant and credits conceded by the plaintiff to the defendant, the items of which account, not including the balance stated, were by the defendant then and there admitted to be correct, and that the several items of money sued for in said account were collected by defendant prior to June the 1st, 1864, and the credits thereon accrued to defendant prior to the same date; and the said defendant then and there admitted that the said plaintiff was a corporation duly incorporated under and by virtue of the laws of the State of Connecticut, and thereupon the said plaintiff rested his case.

And the said defendants, to mentain the issue on his part, read in evidence a paper printed and written in the words and figures following, to wit:

32 *Letter of Secretary Phelps.*

OFFICE OF THE CONNECTICUT MUTUAL
LIFE INSURANCE COMPANY, HARTFORD,
October 13th, 1848.

HENRY STAGG, Esqr., *St. Louis.*

SIR: Herewith you will find some phamplets explaining the principles,

operations, and benefits of life insurance as presented by the Connecticut Mutual Life Insurance Company. These are for circulation among those who will be most likely to insure. You will also find herewith blank forms of applications and also blanks for examining physicians' certificates. In applications for insurance the party proposing should answer the several interrogatories propounded in the printed form, and sign the same, his family physician and an acquaintance should also answer those designated for them & attached to the application. The party should also fill up and sign the declaration attached to the application; then some physician other than the party's should examine the applicant and give his certificate as the physician of the company. If it is proposed to take a policy in behalf of the wife, the interrogatories and the declaration No. 2 should be signed by the husband and wife. All which will make the application complete for forwarding to this office. In addition to this the opinion of the agent, who is supposed to be acquainted with the applicant, is valuable & important to the office,
33 and it is desirable his opinion should be freely expressed in relation to the kind of risk. In presenting the subject of life insurunce to your community, you will find that however much convinced individuals may be of the importance of becoming insured, they will be much inclined to postpone the subject to a more leasure time, and perhaps repeated interviews will be necessary to induce them to perfect their applications, and it is believed the success of an agent in any locality depends very much upon a repetition of such efforts; although an agent may sometimes feel that there is occasion for discouragement, he will find, as the result of his experience, that when the subject is understood in the community, it wins their favor and is generally embraced.

You will observe, by the conditions of insurance, that when the premium is fifty dollars and over on policies running five years or more, a guaranteed note is taken for one-half of the premium; the interest upon these notes is required to be paid annually, but under ordinary circumstances the principal will not be called for; it is, however, liable to be assessed, from time to time, should extraordinary losses require it. You can forward applications by mail, addressed to the secretary, on which, if accepted by the board of directors, policies will be issued, and sent to you to be delivered.

The usual compensation of agents, so far as we know the usage
34 of other companies, is 10 per cent. commission on the premiums, with one dollar for each policy, and 5 per ct. on the premium on the renewal of policies. If you can conveniently advertise and think it expedient, the charges, to a reasonable amount, will be borne by the company, which will also pay postages.

It will be important to select, as the physician for the company, one of high character and abilities, upon whose opinions the office can rely with confidence, and one also whose influence might be beneficial.

This company has commenced business under very favorable circumstances, having, since its commencement, on the 15th December, 1846, issued from 2 to 3,000 policies, with daily continuing applications, and every encouragement to anticipate a large share of public favor.

You will please communicate with the office whenever circumstances may require.

Hoping soon to hear from you in the way of applications, I am, very respectfully, yours,

GUY R. PHELPS, *Sec'y.*

The written portion of which is distinguished herein from the printed portion by being marked as italicised, and which paper the said plaintiff then and there admitted to be the act, and letter of attorney, of the said plaintiff.

And further to mentain the issue on his part, the defendant,
35 being sworn as a witness, testified that he received the said paper, printed and written, and accepted the employment and agency therein tendered him upon the terms therein stipulated, and entered thereunder upon the business of said agency; that at that time life insurance was in its infancy in this part of the country, and the business had to be worked up by preparing the public mind to regard it favorably; that he was occupied about a year at this kind of work before he was successful in obtaining any applications for policies to be issued by the plaintiff.

And to further mentain the issue on his part, the defendant introduced a paper, in writing, in the words and figures following, to wit:

W. R. Hodges' statement.

Connecticut Mutual Life Insurance Company. Assets, $24,000,000.
W'm R. Hodges, general agent for Missouri, Kansas, and Nebraska.
Office S. E. corner of 4th and Chesnut sts.

ST. LOUIS, MO., *May 13th*, 1869.

HENRY STAGG, Esq., *St. Louis.*

DEAR SIR: I have carefully examined the records of business done at this agency, and find that the premiums received from policies in force from June 1st, 1864, to October 1st, 1868, amount in the aggregate to sixty-one thousand seven hundred and twenty-three $\frac{55}{100}$ dollars, ($61,723 55,) said policies being the same issued through you while agent of this company at St. Louis.

Yours,

W. R. HODGES, *Gen'l Agent*,
Per JA'S G. GRAHAM.

36 Which the plaintiff by its counsel then and there admitted to be a correct statement of the renewal premiums received by the plaintiff upon policies issued through the agency of the defendant between the dates therein stated. And the defendant further to mentain the issue on his part, introduced as a witness William E. Harvey, who, being duly sworn, testified as follows, to wit:

I am actuary of the St. Louis Mutual Life Insurance Company of St. Louis, Missouri, and have been acting as such for about two years. I have been in the life insurance business for about five years. I know that there is a usage among life insurance companies in regard to the compensation of their soliciting agents. It is the custom among life insurance companies, in the absence of specific contract providing otherwise, to allow, and of their agents to receive, a commission on all renewal premiums under policies procured by the solicitation of such agents, and this continues as long as the policies run, whether the agency continues or not; in other words, that such agents have a property in such renewals to the extent of their stipulated commissions on the same, and are entitled to these commissions whether the agency continues or not; but if not collected by them, they receive the commissions less the cost of collections. My knowledge in this matter rests solely in the general understanding on
37 the subject among life insurance men.

On cross-examination this witness said:

I commenced as a soliciting agent for a life insurance company, in the State of New Jersey, about five years ago. I followed the same business in Chicago, Illinois, and came to St. Louis about two years ago. I cannot give the name of any life insurance company or companies which have acted on the usage or custom I have mentioned. In all the cases I have knowledge of, the agents had specific contracts in regard to their compensation. I don't know whether the usage or custom of which I have spoken existed either at Hartford, Connecticut, St. Louis, Missouri, or elsewhere, before I went into business. My attention was first attracted to this usage while I was at Chicago, some two and a half years ago. I don't know how far back the usage extended, or whether it extended back to 1848 or 1849, or not.

The defendant then called Morrison, and proposed to prove by him the same facts in substance in respect to usage that he had proved by the witness Harvey. But the court said it was not necessary to offer further or cumulative proof in regard to the usage spoken of by the witness Harvey, because the court considered the compensation of the defendant for his services as soliciting agent of the plaintiff was governed by contract and not by usage. The court therefore, ex mero
38 motu, declined to hear further proof in regard to the usage spoken of, and to this ruling of the court the defendant at the time duly excepted. And thereupon the defendant rested his case.

And the plaintiff, to maintain his issue in rebuttal, read in evidence a paper printed & written in the words and figures following, to wit:

Instructions to agents.

Circular and instructions to agents.

OFFICE OF THE CONNECTICUT MUTUAL
LIFE INSURANCE COMPANY,
Hartford, Sept. 26, 1849.

H. STAGG, Esq.

SIR: In authorizing you to act as agent of the Connecticut Mutual Life Insurance Co., permit me to say that, in soliciting applications for insurance, you will most probably at first meet with many embarrassments and find frequent occasions for discouragement. These difficulties will arise from a want of knowledge on the part of the public in regard to the advantage and benefits to be derived from life insurance, and a disposition, inherent in all men, to procrastinate until a more leasure season, or though convinced of its importance, to defer until a more convenient time to pay the premium. All of our agents have had to contend with the same embarrassments. To overcome the first, it is
39 of the utmost importance that you become perfectly familiar with the subject yourself, that you may be enabled to reconcile any objections, answer any enquiries relating to the conditions, and explain and apply its adaptation and benefits to the various circumstances and contingencies of life. This information may be derived by carefully examining our pamphlets and circulars, and the ingenuity of your own mind in presenting the subject to meet the various conditions of individuals. You should also be familiar with the conditions of other insurance companies, that you may be able to compare them, and present to more advantage the more desirable provisions of this company,

such as giving a credit in the payment of the premium, annual dividends, the payment of those dividends during the life of the party, &c., &c. The second difficulty must be overcome by your personal interviews and repeated importunities with those you think most likely to be insured, and your faculty to persuade them to make no delay in perfecting a business of vital importance to their families, which must be done while in good health, or it can never be done—to-morrow, and some accident may render them for ever uninsurable.

Your success will mainly depend upon the efforts you make, and the perseverence with which they are continued, as it is a subject but little understood by a majority of the people, and at first even viewed with prejudice by some. Happily for the benefit of mankind, these
40 difficulties are passing away, and men are becoming informed upon the subject and considering it as a first duty they owe to their families; and you may with pleasure and satisfaction consider yourself aiding an institution in promulgating an object of vital importance to the public, and the agent of great good to the community, in persuading men to make such provisions for their wives and children as will save them from the wretchedness and crime too often the consequence of being left destitute. Hundreds may have occasion to express to you their gratitude for having been instrumental in securing to them, beyond the contingencies to which ordinary possessions are liable, the means of avoiding a state of degrading dependence to which the death of the head of a family might otherwise have reduced them.

Life insurance companies, it is believed, are the safest monied institutions in existence, and unequalled in their capacities for beneficent usefulness, and they therefore should command the particular and practical attention of professional men, merchants, mechanics, farmers, and all who wish to provide for future contingencies to which they or their families are liable. It is a singular fact that, since the establishment of life insurance companies, 180 years since, there has not been known a single instance of the failure of an institution which confined its operations exclusively to life insurance. The responsibility,
41 therefore, of a life insurance company confining its business to life insurance, with adequate premiums, and managed by concientious, practical business men, may be regarded unquestionable, the conclusion being formed from past experience of those companies which have confined their operations to their legitimate business.

Life insurance companies are of different kinds—the purely mutual, which annually divides every dollar of the profits among its insured members in proportion to the amount of the annual premiums paid by each; the professedly mutual, which declares its dividends once in a term of years, say three or five, crediting the dividends on their books, to be paid only at the death of the party with the sum insured, (of this class is most of the older companies established in the U. States;) the mixed companies, which divide a portion of their profits to the insured, the stockholders taking the remainder; the proprietary or joint stock companies, which divide all the profits among the stockholders.

The mutual system has deservedly become the popular mode of insurance in the United States, and is the one embraced by those best informed upon the subject; and, although the annual premiums are a trifle greater, yet the assured eventually pays but the exact cost of the insurance,
42 receiving back in dividends all above the losses and expenses.

The Connecticut Mutual Life Insurance Company is established upon the purely mutual system. Every person taking out a policy is a member and entitled to vote at the annual meetings. The dividends

are declared annually on the 31st January. All persons insuring previous to that day participate in the profits of that year which are passed to his credit upon the books of the company, to be paid during the life of the insured in the order of rotation from the excess of a capital of profits of $200,000. The stipulated capital of profits having been obtained, the first year's dividend will probably be paid at the close of the present fiscal year; afterwards each year's dividend, in regular order, will be redeemed as the funds of the institution exceed the above two hundred thousand dollars. It is supposed that each person will be required to pay three annual premiums before his dividends will be redeemed; no personal liability of the members beyond the amount of their annual premium. You will not fail to see a decided advantage to the insured in the conditions of this company over those who do not redeem or pay the dividends until the death of the insured, as with us the redemption of dividends will assist in the payment of the
43 annual premiums, after a few of the first years have elapsed, or take up notes given for premiums.

By our charter a wife can insure the life of her husband for her benefit, and in case of death the insurance enures to her own use, and is not subject to the debts of the husband. If the wife dies before the husband, the policy continues, and goes to her children after his death.

Connected with the business department of your agency is involved much that requires the exercise of discretion, sound judgment, and caution, as we shall greatly rely upon your opinion in regard to the class of risks of the applications you forward, and more particularly upon that of the physician you may recommend to the appointment of medical examiner for the company. In this selection, therefore, you should act impartially, and call to the aid of the company a person of well-known skill and integrity, good moral and professional character, and one who will be disposed and able to aid you also in forwarding and prosecuting the interests of the company, and whose interests are not already involved with some other life insurance company. An influential physician can do much to increase the number of applicants by pre-
44 senting the subject at favorable times in his intercourse with the public. When you have made your selection you will report his name to this office, and, if approved, he will be furnished with a medical examiner's letter of instruction.

Your attention is called to the observance of the following summary of the proceedings to effect insurance, viz:

Make yourself familiar with the pamphlets, circulars, and instructions sent you, which are designed to give you all the necessary information required to enable you to transact the business. You should make yourself familiar with the object & use of the blank applications, certificates, & declarations which are used as the first step in effecting insurance. The "declaration" is to be properly made out and signed by the party proposing insurance. The questions are all to be properly answered in the blank places left for that purpose, & also signed by the party or parties. The blanks for the family physician and friend's certificates are also to be filled and signed by the parties referred to by the applicant. When this is done it forms the contract on the part of the proposer upon which the insurance is granted, if granted at all. You will then request the physician of the company to make a per-
45 personal examination of the applicant and fill out his certificate, which will make the application complete. If the party proposing has no family physician he will say so, and refer to the com-

pany's physician; but no application will be considered complete without the examining physician's certificate; this done, it will be ready to forward to this office, addressed to the secretary, and, if approved by the directors, a policy will be returned to you.

In filling out applications, you will recollect that the person for whose benefit the insurance is wanted (as for a creditor, wife, or child) should be the contracting party, and the application should be made in his or her name, and the declaration and questions should be signed by them, and not by the person whose life is to be insured. When a wife proposes on the life of her husband, the application should be made in her name, and signed by both her and her husband; this is to show the consent of the husband to the transaction of the wife; but, where it is more convenient or preferred, the husband can make the application in his wife's name, and sign for her, and also for himself. When a creditor proposes to insure the life of his debtor, the application must be made by the creditor, in which case we do not want the signature of the
46 debtor. You will bear in mind that the policy is based upon the declaration, and this fact will guide you in any form of application required; as, for instance, if a parent wishes to insure his own life for the benefit of any particular child, the application should be made in that child's name, and signed by him, and then the policy will be made in his name. If a person insures his own life, the insurance will go to his estate, to be disposed of like any other personal property. Policies can be assigned at the will of the insured, without giving any notice thereof to this office.

You are not authorized in any case to receive the premium, or any part thereof, at the time of making the application, and not until the policy is received by you. Our policies are not binding on the company until the agent through whom they are issued countersigns them and receives the premium; and in all cases, therefore, when there is any change in the risk by reason of sickness or accident between the time of making the application and the receipt of the policy by you, you will withhold the policy and report the circumstances to this office. The company reserve the privelege in all cases of delivering the policy or not, as they please, after it has been sent to the agent, as the issue depends
47 only upon the delivery by the agent and receipt of the premium. The parties being in good health, you will receive the premium and one dollar charged for the policy; countersign it in a blank for that purpose, and deliver the same, endorsing the receipt of the premium on the inside of the sheet in columns ruled for that purpose, affixing your signature thereto. In receiving the premium, you are allowed to receive a note for one-half of the premium on policies where the premium is $50 or more, and is for a term of five years or more. This note remains a debt on the policy, and payment will not be required (except the interest) unless the losses of the company require an assessment of the note, a contingency not likely to occur; on shorter policies than five years we require all the premium to be paid in cash, and notes given for premiums on policies for a less term than life we require to be indorsed or guaranteed. For notes on life policies we require no guaranty. The interest on these notes is to be paid annually, but the principal can remain a debt on the policy or be cancelled by the dividends. If a loss occurs under any policy, and notice is given to you, you will notify this office of the same, and inform the parties of the kind of proof of death that is required, viz, a declaration (under oath) from
48 the attending physician of the time and cause of death; also from some other person of the time and fact of death, and from a third

person who had knowledge that the deceased was the person insured by that name in this company. In want of any other person knowing to this last circumstance, it will be proper for you to make this declaration. We covenant to pay losses at the end of ninety days after proof of death is received; yet, in cases where no doubt exists, we will pay immediately, if desired, by deducting 6 per cent. interest on the amount for ninety days. We have no blanks for the above certificates for the reason that we choose to have the parties make their own statements in their own way, without any dictation from the agent or this office. Satisfactory proofs being exhibited, you will be furnished with means and instructed how to pay the policy.

If from any cause policies are not taken by the parties applying, but remain in your hands for thirty days, you will return them to be cancelled. You will be required to make reports to this office (on blanks furnished for that purpose) on the last day of every month of the business done during the month; at the same time remitting all the funds in your hands (both cash and premium notes) by mail, together with such policies as have remained in your hands for thirty days
49 with premiums unpaid. You will be furnished with a book in which to register every application before sending it to this office, with the age, occupation, amount insured, & residence; and when you receive the policy issued thereon you can then add the number and date of the policy and the amount of premium. This will enable you to know when the time arrives for renewing each policy and assist you in making your monthly statements to this office.

In the renewal of policies the insured will pay the same premium as the first payment, with the interest on all notes previously given, which interest is to be paid in cash. You will know by the date of the policy how many outstanding notes there are, and compute the interest accordingly You will not apply scrip certificates of dividends in payment of premium until so instructed from this office. Unless the renewal premium is paid on or before the day it is due, the policy is forfeited, and the company are under no obligation to renew; but it is customary and desirable to do so where the party is in good health and remains a good risk. Under such circumstances you are authorized to renew the
50 policy within thirty days after it has expired; but if a longer time has elapsed, you will require the insured to be examined by the company's physician at his own expense, and if the physician certifies that the health of the insured is unimpaired, you are authorized to renew the policy from the day of its date. Should a party whose policy has expired apply for a renewal, whose health is impaired, you will, of course, decline renewing and report the case to this office. Renewal premiums are to be endorsed on the back of the policy, as in the first payment. In your monthly returns to the office you are desired to enter the renewal premiums separately from first premiums, and to enter the numbers and amount of premium of all policies remaining in your hands in the proper column for that purpose.

☞ For your services as above you will be allowed a commission of 10 per cent. on the first premium (cash and notes) and 5 per cent. on all subsequent renewal premiums so long as you continue the agent of the company. This, with postage expenses, you will deduct from your remittances, together with the fees paid to the examining physician. You may collect from the parties insured one dollar for the policy in addition to the premium, which is to be retained by you. This policy
51 fee is not, however, to enter into your account with the office, as no entry is made of it in our accounts with you. We do not author-

ize any expenses for advertising, as we consider general advertising of but little benefit, and the liberal commission allowed will enable the agent to do what special advertising is adviseable, on his own account. We shall forward, however, from time to time, our monthly report and such editorial notices of the company as appear in the papers, which you can insert on your own expense, if you should deem advisable.

You will please pay the examining physician's fees monthly, and deduct from your remittances. The fee generally allowed is the customary fee charged by the physicians for an ordinary visit to a patient. We do not desire to undervalue their services, and, as we hope to have the services of the greatest talents and experience, you are authorized to pay them one dollar for each examination of bona-fide applications, whether he reports favorably or not, and whether a policy is issued upon such application or not, with this provision: that when a policy is issued, and from any cause the party neglects or refuses to receive it and pay the premium, the physician's fee in such cases is to be remitted to the company. It is not supposed that many such cases will occur; but where they do, and the agent loses his labor, and the office the labor of
52 making the policy and the expenses of postage, &c., it is presumed the physician will acquiesce in sharing the loss of his services also.

No fee is to be paid the family physician for his certificate, as the proposer is required to furnish that at his expense, if there is any charged.

The tables of premiums in the pamphlets sent are for the best risks, below which none are taken, and those with infirmities, if taken at all, are charged an additional premium, as the case demands, to be determined by the directors. No insurance for a greater sum than five thousand dollars is taken on any one life.

No new risks for California are taken by this company, but, should future advices from that part of the country induce the directors to resume such risks, you will be duly notified. Old members of the company insured previous to the first of February last will be permitted to visit and reside in California, at an extra premium of 4 per cent. per annum on the amount insured. For sea risks, southern and foreign residence, extra premiums will be charged as specified in the pamphlets.

This company was organized in December, 1846, and its prosperity has hitherto been unparalleled. It is now in the third fiscal year of its existence, and numbers (Sept., 1849) nearly six thousand mem-
53 bers, with a constantly increasing accession. Its losses have been small compared with the numbers which might have been expected according to the tables of mortality upon which life insurance is predicated. By unparalleled success in business and a strict economy in the administration of its affairs, larger dividends have been made to policy-holders than by any other company in the United States, averaging more than 60 per cent. annually, and containing every essential requisite within itself for securing a large and flourishing business. There is no cause to doubt that its future business will be as prosperous.

If anything occurs on which you have doubts in deciding, or you are interrogated on any subject you are unable to answer, you will please communicate with me upon the subject.

In conclusion, permit me to repeat that much (and, indeed, it may be said all) of the success of an agent in any locality depends upon personal application and repetition of effort. Although he may sometimes feel that there is occasion for discouragement, he will find, as the result of his experience, that when the subject is understood it wins decided favor and is generally embraced. Every accession adds an advocate for this

noble cause, and makes success more certain; and it is anticipated
54 that ere long life insurance will be as general as fire insurance now is. An important requisite for the success of an agent is indomitable perseverance. All such persons succeed and are profitably establishing themselves for a term of years, or for life, in the dissemination of useful knowledge that will practically bespeak its substantial usefulness to many a widow and orphan family. If agents would fully appreciate the beneficent results of their individual efforts upon the present and rising generations, that alone would increase their zeal to make the benefits of life insurance practically known to every man in their community.

Hoping soon to receive evidence of your successful efforts, and that your anticipations will be more than realized, I am, very respectfully, yours,

GUY R. PHELPS, *Secretary.*

It is requested that you will preserve this circular from falling into the hands of the officers or agents of other life insurance companies.

The written portion of which is distinguished from the printed portion by being marked as italicised, and which paper was by the defendant admitted to be the act of the plaintiff.

The plaintiff then called the defendant as a witness, who testi-
55 fied that the said paper was received by him and acted on; that he was guided by its suggestions and advice, so far as he deemed them good, in the conduct and management of the business; that he continued to act as agent of the plaintiff from the time he commenced, in 1848, some sixteen years, and until the plaintiff removed the business out of his hand, about the 1st day of June, 1864; that he had not sent on any applications for policies prior to September 26th, 1849, nor had any policies issued on applications through him prior to that period. It was not until after that date that he began to succeed in getting applications, and that he had charged and received all the commissions he was entitled to receive prior to June 1st, 1864.

And further to mentain the issue on his part in rebuttal, the plaintiffs read in evidence a paper written and printed in the words and figures following, to wit:

Bond.

{CONNECTICUT MUTUAL LIFE INS. COMPANY.} Know all men by these presents that I, Henry Stagg, of the city of St. Louis, county of St. Louis, and State of Missouri, as principal, and Edward Boyle, E. Dobyns, & R. H. Cole, of the city of St. Louis and county of St. Louis, and State of Missouri, as surety, are held and firmly bound to the Connecticut Mutual Life Insur-
56 ance Company, a corporation incorporated by the legislature of Connecticut, and located at Hartford, county of Hartford, and State of Connecticut, in the sum of five thousand dollars, to be paid unto their certain attorneys or assigns, to which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and subscribed at St. Louis, Mo., this 19 day of July, 1858.

The condition of this obligation is such that whereas the above-named Henry Stagg has been duly appointed by the directors of the aforesaid company their agent for the city of St. Louis and its vicinity, State of

Missouri, during their pleasure, and by reason whereof, and as such agent, he will receive into his hands and possession divers sums of money, policies, chattels, and other effects, the property of said company, and is bound to keep true and accurate accounts of said property and of his receipts and disbursements, and to account for and pay over the same to said company when demanded:

Now, therefore, if the said Henry Stagg shall promptly pay to said company the amounts received from time to time, and shall well
57 and truly perform all and singular the duties as agent of said company for and during the time he officiates as said agent, and shall deliver all the property which he may receive and hold as agent to his successor in said office, or to such other person as the said company or its authorized officers may direct, according to the provisions of the charter, by-laws, rules, and regulations of said company now existing, or which may be adopted by said company, then this obligation shall be null and void; otherwise remain in full force and virtue.

H. STAGG. [SEAL.]
EDW'D BOYLE. [SEAL.]
E. DOBYNS. [L. S.]
R. H. COLE. [L. S.]

Signed, sealed, and delivered in presence of—

The written portion of which is distinguished from the printed portion by being marked as italicised. The execution of which paper was established by the testimony of the defendant, who also testified that said paper was sent to him in blank, inclosed in a circular containing a statement that the company had lost, through the default of some of its agents, and it therefore requested the agents to fill up, execute, and transmit the said paper to the company; which he did accordingly.

The plaintiff here closed, and the cause was submitted to the
58 court upon these facts for its determination, and the court proceeded then and there to determine and adjudge the same, and made the following rulings of law in relation to the facts as proven and admitted, to wit:

1st. That the said paper of the date of September 26th, 1849, under the facts proved, was substituted as a new contract, instead of that dated October 13, 1848, and became and was binding upon the defendant.

2d. That the clause of the said paper of Sept. 26th, 1849, which is in the words following, to wit, "so long as you continue agent of said company," is to be construed to limit the duration of the said agency to the pleasure of the plaintiff or defendant, respectively, and operated to terminate the defendant's right to commissions on renewal premiums from and after the date of the revocation of his agency thereunder by the plaintiff.

To each of which rulings of the court the defendant, by his counsel, at the time duly excepted, and the court, so holding the law to be, then and there rendered judgment for the plaintiff; and to the action of the court therein the defendant, by his counsel, at the time duly excepted.

And afterwards, to wit, on the 14th day of May, 1869, the defendant,
59 by his counsel, filed in the court his motion to set aside said judgment for a new trial of said cause in the words and figures following, to wit: (Copied on pages 26 & 27.) Which motion came on to be heard at the same term in the said court, to wit, on the day of

May, 1869, and, being submitted to the court by the said plaintiff and defendant by their respective counsel, the same was by the court overruled, and to the action of the court in overruling the said motion the defendant, by his counsel, at the time duly excepted, and now prays that this bill of exceptions may be signed, sealed, and enrolled; which is accordingly done.

SAMUEL TREAT, *Judge.* [SEAL.]

Writ of error having been issued in this case, the following bond was filed, viz:

Bond.

Know all men by these presents that we, Henry Stagg, as principal, and William Downing, are held and firmly bound unto the Connecticut Mutual Life Insurance Company in the full and just sum of two thousand dollars, to be paid to the said Connecticut Mutual Life Insurance Company; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, & administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-first day of May, in the year of our Lord one thousand eight hundred
60 and sixty-nine.

Whereas lately, at the April term, A. D. 1869, of the circuit court of the United States of America in and for the districts of Missouri, in a suit depending in said court between the Connecticut Mutual Life Insurance Company, plaintiff, and Henry Stagg, defendant, judgment was rendered against the said Henry Stagg, and the said Henry Stagg having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Connecticut Mutual Life Insurance Company, citing & admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such that if the said Henry Stagg shall prosecute said writ to effect and answer all damages and costs, if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

HENRY STAGG. [SEAL.]
WILLIAM DOWNING. [SEAL.]

Sealed & delivered in presence of—
BEN. F. HICKMAN, *Clerk.*

Approved by—

SAMUEL TREAT, *Judge.*

61 And afterwards, at said regular stated term of said circuit court, the following further proceedings took place in this case on Friday, the 21st day of May, in said year, to wit:

THE CONNECTICUT MUTUAL LIFE INSURANCE Co., plaintiff, *ag'st* HENRY STAGG, DEFENDANT. } Assumpsit.

Ordered, by the Honorable Samuel Treat, one of the judges of this court, that a supersedeas be granted, staying all further proceedings upon the judgment rendered in this case, a writ of error having been

allowed by him to the Supreme Court of the United States, and bond with surety executed and approved as required by law.

(Signed) SAMUEL TREAT.

62 UNITED STATES OF AMERICA,

Circuit Court for the Districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writings hereto annexed to be a transcript of the record and proceedings in case of the Connecticut Mutual Life Insurance Company against Henry Stagg, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said districts, this 29th day of June, in the year of our Lord eighteen hundred and sixty-nine.

[SEAL.] BEN. F. HICKMAN,
Clerk of said Court.

63 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges
[SEAL.] of the circuit court of the United States in and for the district Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you at the April term, A. D. 1869, of the said circuit court, between the Connecticut Mutual Life Insurance Company, plaintiff, and Henry Stagg, defendant, a manifest error hath happened, to the great damage of the said Henry Stagg, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri Districts.

Allowed by—

SAMUEL TREAT, *Judge.*

64 MISSOURI DISTRICTS, *sct:*

As clerk of the circuit court of the United States for the districts of Missouri, I herewith transmit a transcript of the record and proceedings in the case, as stated in the within writ of error.

In witness whereof I have hereunto subscribed my name and affix the seal of said court.

[SEAL.] BEN. F. HICKMAN, *Clerk.*

65 The United States of America to the Connecticut Mutual Life Insurance Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the United States circuit court in and for the districts of Missouri on 21st May, A. D. 1869, wherein Henry Stagg is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, one of the judges of the United States circuit court in and for the districts of Missouri, this twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-nine.

SAMUEL TREAT.

The Connecticut Mutual Life Insurance Company hereby admits due service of the above citation.

JOHN M. KRUM,
Att'y for Defendant in Error.

(Indorsement on cover:) No. 312. Henry Stagg, plaintiff in error, vs. the Connecticut Mutual Life Insurance Company. Missouri C. C. U. S. Filed 6th December, 1869.

BRIEF OF POINTS AND ARGUMENT OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

No. 312.

HENRY STAGG, PLAINTIFF IN ERROR,

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

JAS. S. MOODY,
Att'y for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

No. 312.

HENRY STAGG, *Plaintiff in Error*,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Defendant in Error.*

In Error to the Circuit Court of the United States for the District of Missouri.

STATEMENT AND BRIEF OF PLAINTIFF IN ERROR.

This was an action brought by the defendant in error against the plaintiff in error in the United States Circuit Court for the District of Missouri, at the October term thereof, A. D. 1868, for the recovery of twelve hundred and forty $\frac{76}{100}$ dollars.

The defendant in that action pleaded the general issue, and noticed a set-off in the sum of five thousand dollars, which he claimed to be due and owing to him from the plaintiff, and that he would ask judgment upon such set-off for the balance thereof, after deducting therefrom the amount of said plaintiff's demand; which notice was filed with the said plea of the general issue in the said court.

On the 13th of October, 1848, the plaintiff in error entered into the service of the defendant in error, as its agent, at the city of St. Louis, in the conduct of its business of life insurance at that place, under a letter of attorney of that date, which provided that he was to receive for his services a commission of ten per cent. on first pre-

miums, and five per cent. on renewal premiums, accruing on policies secured to be taken through his agency.

The plaintiff in error, so entering the service of the defendant in error, continued in such service until the 1st of June, 1864, when, without fault, he was discharged therefrom.

At the time of such discharge, there was a large number of policies secured to be taken through the agency of the plaintiff in error, in force, and upon which the defendant in error was annually receiving renewal premiums, from the time of said discharge up to and after the commencement of said action. The renewal premiums so received by the defendant in error, as admitted by it on the trial below, from the said 1st of June, 1864, to the commencement of said action, in the Circuit Court, amounted in aggregate to the sum of sixty-one thousand seven hundred and sixty-three $\frac{55}{100}$ dollars.

The plaintiff in error claimed, below, that he was entitled to five per cent. commissions on the said aggregate sum so received for renewal premiums by the defendant in error during that time.

The defendant in error claimed, below, that the said letter of attorney of August 13, 1848, was revoked by, and a new contract formed under, a circular bearing date September 26, 1849, sent by the defendant in error to the plaintiff in error, and by him received and acted on so far as its suggestions and advice were deemed good by him. This circular contained an essay on the principles and advantages of life insurance, some instructions and much good suggestion and advice as to the best methods of reaching popular opinion and impressing it favorably towards life insurance generally, and the Connecticut Mutual Life Insurance Company in particular. It contained no instructions inconsistent with those of the letter of attorney of October 13, 1848, nor anything inconsistent with the power in said letter granted. But, concealed and covered up, as it were, by the clauses of the said essay, instructions, suggestions and advice contained in said circular, was inserted these words: "For your services as above, you will be allowed a commission of ten per cent. on the first premium (cash and notes), and five per cent. on all subsequent renewal premiums, so long as you continue agent of this company." The compensation thus provided for in the circular is the same as that of the letter of attorney of October 13, 1848, excepting that the latter did not limit the agent's right to the stipu-

lated commission on renewal premiums to the time of his remaining agent of the company, which it was claimed the circular did in the words "so long as you remain agent of said company."

The court held that this circular "of September 26, 1849, under the facts proved, was substituted, as a new contract, instead of that dated October 13, 1848, and became and was binding upon the defendant."

In accordance with such ruling, judgment was rendered by the court for the plaintiff below in the sum of one thousand three hundred and twenty-eight dollars and thirty-one cents, and the defendant below brought the cause here by writ of error.

The questions to be discussed, therefore, are: 1st. Jurisdiction. 2d. The soundness or error of the ruling of the court below as to the law, under the facts.

BRIEF OF POINTS, ARGUMENT AND AUTHORITIES.

I.

This court has jurisdiction of this cause.

I. The "matter in dispute" exceeds two thousand dollars.

The defendant below set off against the plaintiff's claim $5,000, which he claimed due him from the plaintiff below, and asked judgment for the balance thereof, after the allowance of the plaintiff's demand.

We concede that, under the common law-rule, set-off is defensive merely. All the defendant, at common law, could accomplish by set-off was merely to lessen or balance the plaintiff's demand. He could obtain no judgment for the balance thereof over and above the just claim of the plaintiff.

But the common law-rule has not prevailed in the State of Missouri since 1835. Under the statutes of Missouri, "If two or more persons are mutually indebted in any manner whatsoever, and one of them commence an action against the other, one debt may be set off against the other, although such debts are of a different nature;" and, "if there be found a balance due from the plaintiff to the defendant, judgment shall be rendered for the defendant for the amount thereof, together with costs," and the set-off may be given in evidence under the general issue, or pleaded in bar; provided, in

the former case, "notice was given, at the time of pleading the general issue, of the demand so intended to be insisted upon, and upon what account it became due." (See Revised Statutes of Missouri, 1835, p. 579; *id.* 1865, pp. 602, 603.)

II. This rule as to set off, under the statutes of Missouri, becomes the rule of procedure and decision in the United States Circuit Court for the District of Missouri. (Judiciary act of 1789, sec. 34; Process act of 1828, sec. 1, and Process act of 1842.)

III. The defendant below was then entitled to a judgment upon his set-off against the plaintiff below, if the same were sufficiently established in evidence. A set-off, under the statutes of Missouri, is in principle precisely analogous, therefore, to a plaintiff's demand. In its nature it is a cross-action; and it comes clearly within the meaning of the words "matter in dispute," used in the judiciary act, as interpreted by this court in the case of Kannouse *vs.* Martin, 15 How., 198, in which the court declare that those words refer to "THE CLAIM PRESENTED ON THE RECORD TO THE CONSIDERATION OF THE COURT."

IV. This rule, as to the sense of those words, is decisive of the whole question; for it cannot be denied that, in accordance with this interpretation, it is equally true that "what the plaintiff thus claims" and what the defendant thus claims "is the matter in dispute."

Where the defendant simply resists the plaintiff's claim by a merely negative defense—where he presents no affirmative matter of his own upon which he is entitled to claim a judgment—of course, in that case, he does not come within the interpretation; for he does not "present on the record to the consideration of the court" any "claim." But when he sets off a claim in his favor against the plaintiff, and asks judgment thereon under the statutes of Missouri, he does undeniably, BY HIS SET-OFF, "PRESENT ON THE RECORD TO THE CONSIDERATION OF THE COURT" A "CLAIM."

It follows, therefore, under the ruling of this court in Kannouse *vs.* Martin, above cited, that the defendant's set-off was, in the sense of the 22d section of the judiciary act, a "matter in dspute" in the court below.

But if the set-off comes within the rule as to "matter in dispute" in the court below, it must equally come within the rule in

this court; for it equally constitutes a "claim presented on the record to the consideration of the court" here as in the court below.

The ruling of this court in the case of Gordon *vs.* Ogden, 3 Pet., 33, notwithstanding it was held that, where the defendant below brings the writ of error, the amount of the judgment below is the measure of the amount in controversy in this court, is entirely consistent with its ruling in Kannouse *vs.* Martin, and powerfully supports the view above taken.

In Gordon *vs.* Ogden, the defense was negative merely; there was no affirmative claim, as by set-off, presented on the record by the defendant for the consideration of the court. When he brought the cause up, therefore, there could not be anything presented on the record to the consideration of this court but the judgment below; and hence that judgment necessarily became, in that case, the measure of amount in controversy, in error. In delivering the opinion of the court, the learned Chief Justice said: "If the writ of error be brought by the plaintiff below, then the sum which his declaration shows to be due may be still recovered, should the judgment for a smaller sum be reversed."

Can it be doubted that it must be equally true that "if the writ of error be brought by the" *defendant* "below, then the sum which his" *set-off* "shows to be due may be still recovered, should the judgment for a smaller sum be reversed"? The reason, thus stated by Judge Marshall, clearly develops the principle upon which the decision rests, viz: that the true measure of the amount in controversy, in this court, is THE AMOUNT WHICH THE PARTY BRINGING THE WRIT OF ERROR COULD RECOVER, IN CASE OF A REVERSAL OF THE JUDGMENT.

In Gordon *vs.* Ogden, the plaintiff demanded of the defendant more than two thousand dollars, but obtained judgment for a less sum than that amount. The defendant set up no set-off or other affirmative claim in defense. He brought the case up, and it was decided that the amount of the judgment was the amount in controversy in this court, on the ground that it was impossible for the plaintiff to gain an advantage, on reversal, greater than the amount of the judgment, and "consequently," says Judge Marshall, "the matter in dispute cannot exceed the amount of that judgment."

But what would the court have said, guided by the principle underlying this reason, if Gordon had, by way of set-off, presented on the record, in the court below, a claim upon which he would have been entitled to demand judgment? It would, adhering to the reason stated by the Chief Justice, have been compelled to hold the amount of that claim to be the amount of the matter in dispute on the writ of error; for it is obvious that in such case the amount so claimed, by way of set-off, might still be recovered, should the judgment below be reversed.

The reasons stated by Judge Story in support of the decision of this court in Knapp *vs.* Banks, 2 How., 73, in like manner support Kannouse *vs.* Martin, and settle the principle above asserted, by placing the decision on the same reason as in Gordon *vs.* Ogden.

Nor are there any cases, decided by this court, inconsistent with the principle settled in the three cases above cited. In Wise & Lynn *vs.* Columbia Turnpike Co., 7 Cr., 276; Smith *vs.* Honey, 3 Pet., 469; Scott *vs.* Lunt's Admr., 6 Pet., 349, and Olney *vs.* Steamship Falcon, the same principle supports the ruling. In all of them the judgments below were for less sums than two thousand dollars, while the defendants below brought the writs of error; and *no affirmative matter of defense* was shown on the record, upon which the defendants might have obtained judgment. In all such cases we have only to apply the rule, and the principle which supports the rule, as settled in Kannouse *vs.* Martin, Gordon *vs.* Ogden, Knapp *vs.* Banks, to arrive at the same conclusion as was reached in all those other cases, viz: that in all such cases (cases where the defense is negative merely) the amount of the judgment below is the amount of the matter in dispute in this court, because there is no matter presented in the record, upon which the plaintiff in error could obtain any advantage in amount greater than such judgment, since the utmost which could be accomplished in such cases, on reversal, would be to defeat altogether the judgment below.

If the above views, touching the principles of the decisions hitherto made by this court upon the question of jurisdiction, be sound, its jurisdiction of this cause becomes undeniable; because here is a "claim presented on the record to the consideration of the court" by the party bringing the writ of error, in the sum of $5,000, and upon which, in case the judgment is reversed, he may recover against the plaintiff below.

II.

The Circuit Court erred in its rulings of law in relation to the facts as proven and admitted.

These rulings are comprised in the two propositions set forth on the record, page 24, viz.:

"1*st*. That the said paper of the date of September 26, 1849, under the facts proved, was substituted, as a new contract, instead of that dated October 13, 1848, and became and was binding upon the defendant."

"2*d*. That the clause of said paper of September 26, 1849, which is in the words following, to-wit: 'so long as you continue agent of said company,' is to be construed to limit the duration of the said agency to the pleasure of the plaintiff or defendant respectively, and operated to determine the defendant's right to commissions on renewal premiums from and after the date of the revocation of his agency thereunder by the plaintiff."

The second of these propositions is dependent on the first, and must fall with it. We shall therefore discuss the first only.

The facts in relation to the two papers mentioned in the first proposition are these: The plaintiff in error entered the service of the defendant in error, under the paper dated October 13, 1848, as its agent in St. Louis, and continued to act as such agent from that time until June 1, 1864.

About a year after his appointment, under the paper of October 13, 1848, the company sent him the paper of September 26, 1849, which he received, and acted on so far as he deemed the suggestions and advice good.

This paper came to the plaintiff in error as a printed circular, constituting really an essay on life insurance, and bears on its face all the marks of a document intended for instruction in the sense of teaching; and, coming to one already acting as agent under valid authority, it is not calculated at all to suggest the idea that its purpose was to create any new power, or to change any subsisting relations.

Now, do these facts warrant the court in its holding that this paper of September 26, 1849, "was substituted as a new contract" for that of October 13, 1848?

If so, it can only be on one or both of the following grounds, viz: 1st, that the circular of 1849 operated to revoke the letter of 1848; or, 2d, that it submitted a proposition for a change of the basis of compensation, and that such proposition was accepted by the plaintiff in error, such acceptance being evidenced by his conduct in continuing to discharge the duties of the agency.

These propositions, which we say are the grounds of the ruling, we propose to discuss separately.

I. The circular of 1849 did not operate to revoke the letter of 1848.

Each of these papers contains two distinct parts, and these parts are to be considered by themselves separately. In each paper there is a power, and in each is a contract; and these two have no more intimate relation, because of being embodied in one paper, than if contained in separate and distinct documents. The power has no relation whatever to the contract for compensation, since compensation is not in the least material to the validity of the power, which remains the same with or without compensation—with much or with little.

In considering, therefore, what power was created under one of these papers, and what revoked by the other, we are to remove from contemplation the contracting parts, and retain for examination those parts only which have relation to the power created and instructions given respecting that power.

In this view of it, the paper of 1848 is a letter of attorney empowering the agent to act for the principal, and giving him certain instructions respecting the execution of his agency.

Now, if that power was revoked by the circular of 1849, we ask in what manner? It is not pretended that it contains any express revocation. It is not pretended that it makes any change in the power. It is not pretended that it contains any instructions inconsistent with the power, or inconsistent with those of the letter of 1848. Though the circular is much the more extensive and elaborate, the two papers, in all that is substantial and real, relating to the power, are precisely the same. The only substantial difference between the two is the difference in respect to the compensation proposed.

This brings us to the only point in this connection about which

there can be even a discussion, viz: whether the proposition of the circular of 1849, for a change of the contract for compensation, itself operates to revoke the existing power.

It is undoubtedly competent to a principal, if he desire to get rid of a contract for compensation, to accomplish his purpose by means of a revocation, for he thus cuts under and practically annuls the contract by destroying the subject on which only it could operate—the power being revoked, no compensation could be earned through executing it.

But the converse is not true. The power remains unaffected though the contract for compensation be modified or destroyed. This is undeniable, since the validity of a power has no relation to compensation, and is, therefore, in no wise affected by its want.

In so far, therefore, as respects the naked question of revocation, the proposition for a change in the contract for compensation could have no effect; and hence we are bound to accept the paper of October 13, 1848, as the continuing source of the power—unaffected by the circular of 1849.

II. Having disposed of the question of revocation, we come now to what we suppose was the real question in the mind of the court below, and which we suppose the real question which the defendant in error will insist on here, viz:

Was the conduct of the agent such in the premises as to constitute a valid acceptance by him of the proposed change of compensation?

It was not, because:

1st. There was no consideration to support his acceptance.

Where a proposition is submitted on one side and accepted on the other, so as to constitute a valid contract between the parties, it is an offer, from the one, to do or give something to the other, in consideration of something to be done or given by the other. An offer of this kind, when accepted, constitutes a valid contract. Differing in form only, it is, in principle, not unlike other contracts, and must rest on a good consideration, or, being *nudum pactum*, it will have no validity.

Now, what is it which the circular of 1849 offers the agent in consideration of his accepting the proposed new contract? Is it

answered, the agency at St. Louis? But that agency was his already, fully vested in him under the letter of 1848, and, as we have shown, was unrevoked. To offer that agency, therefore, as a consideration, would not be less absurd than to insist that an offer to sell a man his own farm is a good consideration to support his promise to purchase and pay for it. Yet it cannot be pretended that anything else was offered as a consideration for the agent's acceptance of the proposed change of contract, other than an agency already completely vested in him.

In this view of the case there could be no valid acceptance, even assuming there had been an express acceptance. But,

2d. There was no acceptance at all.

It is insisted that the conduct of the agent in continuing on in the discharge of the duties of the agency, after the reception of the circular, constituted an acceptance of the proposed contract. But this view rests on a plain misapprehension of the relations of things. Here is a man invested with an agency which he has undertaken, and is bound to execute. If, now, he goes on to discharge his duty in executing the agency, to what has his conduct therein relation? Has that conduct relation to his obligation to perform that agency, as he has undertaken to do, or does it relate to a new proposition for compensation? It is impossible not to perceive that his conduct has no relation to the latter, and cannot be responsive to it. The fact, then, that the agent continued to execute the power, under the letter of 1848, cannot be construed into conduct implying an acceptance of any new proposition. He was simply discharging an already existing duty.

We make no doubt but that if the whole matter had then been new—if there had been no previous empowering—then an entry by Mr. Stagg upon the duties of the agency would have constituted an acceptance both of the agency under the circular and of the contract proposed therein. But such was not at all the attitude when the circular was received. Mr. Stagg was then executing a valid power which the circular, as we have seen, did not revoke, and which he simply continued to execute in accordance with both his right and his duty.

But it is insisted that the plaintiff in error acknowledged, from the witness stand on the trial below, that he accepted the new con-

tract, or rather that he accepted the circular as constituting both his authority and the contract for compensation.

We have no hesitancy in saying that, in our judgment, this view is wholly unwarranted by his words. On the contrary, his testimony, taken altogether, is conclusive that he did not for a moment suppose that he was accepting any new relations, or that the company was proposing any, and much less that the circular of 1849 had become the source of his authority.

As a witness the plaintiff in error says (Record, p. 23) of the circular, that he received and "acted on it; that he was guided by its suggestions and advice so far as he deemed them good in the conduct and management of the business." And of the letter of October 13, 1848, he says that he received it and "accepted the employment and agency therein tendered him, upon the terms therein stipulated, and entered *thereunder* upon the business of said agency." (Record, p. 16.)

Here the witness does not say he acted *under* the circular of 1849, but that he acted "*on*" it. If he had used the word *under* instead of *on*, he would have evidently meant to say that his power was derived from the circular. Such is the undoubted force of the word *under*. But the word *on* has no such application. The difference of the two words is that the former is used to express the relation of an act performed to the authority by which it was empowered to be done. Thus we say an act is done *under* the power which authorizes it—never *on* the power; while the latter is used to express the relation of harmony or concord. Thus we say one acts on advice; that is, in harmony—in concord—with it.

In this connection, it will be observed how different is his phraseology where the witness speaks of the letter of 1848. He does not say he "acted on it," but that he "accepted the employment therein tendered him," and "entered *thereunder* upon the business of said agency."

But the witness said of the circular, he "acted on it," and immediately adds, by way of explanation, "that he was *guided by its suggestions and advice so far as he deemed them good.*" This is a clear exposition of the sense in which he used the words "acted on," viz.: that he meant acted in *harmony with*, and not *under*, the circular.

These added words not only show the sense in which he used the word "on," but also the fact that the circular was regarded by him at the time (so far as he and the other old agents were concerned) as an essay on life insurance, containing good advice and suggestions, and not as an authority under which he derived his power to act. And when we look into the document itself, we find he was fully justified in his conception of it; it is an elaborate and able essay, abounding in suggestion and advice, presenting for consideration the best methods of favorably impressing public sentiment, the motives which should induce to life insurance, and the grounds for confidence in the strength and stability of the company. Thus we see how suitable his language to express the meaning which we have insisted on.

But this is not all. When he says "he was guided by its suggestions and advice, *so far as he deemed them good*," he makes plain his idea that he had full discretion in the premises—that he might be guided by the advice of the circular or not, as his own judgment approved. This is decisive that he did not consider himself as acting *under* the circular at all; for, upon the most fundamental principles, if it had been the source of his authority there could be no discretion in him to obey or not its advice. In that case it would have been the law of his conduct, and he could have exercised no judgment of his own in the premises. This view of his words we take to be decisive of the question.

3d. The circular of 1849 was never intended to revoke the power under the letter of 1848, nor to create a new contract.

It was evidently, as all the circumstances indicate, prepared for use in creating new agencies and for fixing the compensation of the new agents. It was not prepared for the old agents nor intended to affect their relations to the company. After it was prepared and ready to be sent out, it was doubtless considered desirable to have it in the hands also of the old agents, because it was much more elaborate and detailed in its explanations and suggestions touching the best methods of advancing the insurance business than the letter of 1848, which contained substantially the same matter, in a more condensed and less perspicuous form. The circular was an admirable essay on the whole system of life insurance, setting forth its advantages and pointing out various motives which the agent might advantageously urge. Because of all this, it was indeed desirable

for this circular to be in the hands of all the company's agents—the old as well the new—that they might have the opportunity of studying the principles and suggestions set forth in it, and taught, encouraged, and strengthened thereby. All this, it seems to us, is patent on the face of the paper and the circumstances of the case. If anything were wanting to confirm and establish this view, we have it in the note appended to the circular, viz: "It is requested that you will preserve this circular *from falling into the hands of the officers or agents of other Life Insurance Companies.*" This note shows precisely the estimate entertained by the company of this circular—that the company regarded it as a valuable treatise; well thought out; thoroughly digested—a thing to be used by itself and its servants in its own exclusive interests, and its light denied to its competitors.

Thus we obtain a very simple and reasonable solution of the object of the circular, as sent to the old agents. And this solution is rendered positive by the opening words of the circular, viz: "In authorizing you to act as agent of the Connecticut Mutual Life Insurance Company, permit me," &c. Now, these words could not, it is clear, be addressed seriously to an old agent who was already fully authorized to act, and was then acting, unless some new power were conferred, which is not pretended here. It conclusively shows that, being prepared for use in creating the new agencies and instructing the new agents in the principles of the business, and found to contain useful matter for the study of the old agents, it was sent to the latter because of its value as a circular—as an essay—and not with the purpose of changing any relations of the parties.

These opening words of the letter might appropriately be addressed to those for whom only the paper was prepared—persons about to become agents—*but not to those already authorized.*

It will be observed, in this connection, not only that the paper of 1849 calls itself a "circular," but that *the name of the Secretary is not, as it was in the letter of* 1848, *signed with the pen, but is printed.*

This suggests what was doubtless true: that the circular was printed in two parcels—one parcel designed for use in erecting the new agencies, and in these the Secretary's name was left blank, to be signed by him with the pen. This would be so manifestly, in the ordinary course of business, demanded that there can scarcely

remain a doubt of it: because, in that case, the paper was to operate in a character beyond that of a mere circular. In addition, it was to become both the grant of power and the contract for compensation; and hence every reason in the premises demanded that it be signed in his own handwriting by the officer executing. But for use in circulating among the old agents, no such reason existed —it was designed for no such use, and the more convenient form of printing the name was adopted in those for the old agents.

Again, since every person must, *prima facie*, be presumed to act in accordance with the dictates of justice, it must be conceded that if, under the circumstances then existing, it would have been unjust for the company, in September, 1849, to revoke the letter of 1848, the legal presumption is against an intention to revoke, unless such intention be expressly stated, or so clearly implied as to overcome the presumption of honest intention.

The circumstances which render a revocation of the letter of 1848 unjust at that time, appear in the letter of 1848, the circular of 1849, and the testimony of Mr. Stagg. They are these: When Mr. Stagg entered the service of the company, both the life insurance business and that particular company were in their infancy. Entering under the letter of 1848, it was well understood that he would first have to develop, in his district, a favorable public sentiment towards the business itself, and then beget public confidence in the stability of the company, before any returns might be expected either for himself or his principal. To accomplish this it must have been foreseen by both the parties that much time and personal efforts would have to be expended. There could have been no grounds to hope for returns under a year, and in point of fact it was about that time before policies began to be taken. Therefore, it must have been understood between the parties at the very inception of the matter, that the first year would be consumed almost entirely in the preparation of the field—the development of public sentiment—for future remunerative work. It was expected, and so became one of the elements of the understanding, that the agent was to expend about a year's time and labor, without other recompense than the commissions which were to be realized on the returns of succeeding years. With this understanding, the plaintiff in error had gone on faithfully laboring for about one year—had expended his energies in bringing the field into a productive condi-

tion—had planted the seed, expecting to reap the harvest in requital. But just when all things were ready, and returns were about to come to him, his employer proposes that he shall not reap—his power is revoked unless he will work for less than he had contracted for. In other words, the principal, on the theory of the defendant in error, intended, by the circular of 1849, to revoke the power of the agent after he had spent a whole year's time in its service without reaping any reward, just at the moment when a return for his labor was commencing, or else force him into a new contract. We say such intention is so manifestly unjust that the presumption is *prima facie* against it.

There being, then, such injustice in such intention; and there being, as we have shown above, a reasonable purpose for sending the circular involving no such unjust intention—viz: the enlightening, strengthening, and encouraging the old agents—it is difficult to escape the conclusion that, *prima facie* at least, the company, in sending the circular, had in contemplation no such injustice, and did not intend the circular either to revoke a power or create a new contract, or change any subsisting relations.

Again, even if there had been such an intention on the part of the company, the plaintiff in error had reasonable grounds to suppose otherwise, for the same reasons as above urged.

If the company had really intended the circular as a revocation, or as creating a new contract, it would not only have had a very unjust intention, as we have shown, but the method of accomplishing that intention was fraudulent and unwarrantable—it was a mere trap set to catch the party unawares. For, setting forth at great length and in detail the principles and advantages of life insurance, and the best arguments to be brought to bear on public sentiment in its behalf, it injects into the essay, concealed in a few words—"while you remain agent"—the fatal change. And these words, lying thus concealed, and covered up by an immense mass of other matter, would be read over by ninety-nine out of every hundred, without their purport and bearing being perceived or understood, especially where the attention was drawn off by the multitude of matters addressed to it.

If the company had intended, in any straightforward and honest manner, to revoke an old power, or to substitute a new contract for an old one, it would have proceeded directly to revoke the old

power and to propose the new contract, disencumbered of the immense mass of matter contained in the circular; and then the agent would have understood precisely what was meant, and have acted accordingly.

But in this case, what the other side claims to have been the real purpose of the paper, is not only covered up and concealed by the mass of matter it contains on other matters, but that purpose is still more effectually concealed by the very title under which the circular is sent out, viz: "CIRCULAR;" for that is what the paper calls itself. And we submit that that name, coupled with the general character of the paper, was so decidedly misleading in its nature as to render the method of accomplishing its purpose—if the company's purpose were to change or abrogate existing contract relations—unfair and fraudulent. Certainly, under such circumstances, the conduct of the agent is not to be deemed to have been in response to any such concealed purpose.

We insist, then, by way of recapitulation:

1st. That the power under the letter of October 13, 1848, was not revoked by the circular of 1849; since that circular made no change in the power nor contained instructions inconsistent with those of the letter.

2d. There being no revocation of the power, any proposed change of the contract, even if accepted, would be *nudum pactum*—there being nothing offered the agent, not already his, in consideration of his new promise.

3d. The continued discharge of the duties of his agency—there having been no revocation of his power—by the agent, was simply the performance of a duty incumbent upon him, and had relation alone to the authority under which he was acting; and so could not be construed into an acceptance of any other authority, nor of any new contract.

4th. The circular was never intended by the company to revoke, nor understood by the agent as revoking, any power, or proposing to him any new contract. As sent to the old agents it was regarded simply as a circular bringing to them valuable information, suggestion, and advice, but not any new authority nor any new contract.

With confidence in the soundness of these positions, we ask a reversal of the judgment below.

JAS. S. MOODY,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

No. 312.

HENRY STAGG PLAINTIFF IN ERROR.

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

No. 312.

HENRY STAGG, *Plaintiff in Error*,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Defendant in Error*.

SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR.

I. It is conceded that the plaintiff's (in error) case rests on express contract—the letter of attorney of October 13, 1848. By the terms of the contract the agent was to have 5 per cent. of renewal premiums on policies issued through his agency. The work was really done when he had by his solicitation obtained a customer for the company, and under this contract he was to have for his services in obtaining the customer 10 per cent. on the first and 5 per cent. on the renewal premiums paid to the company by this customer. Now these renewal premiums may continue to be paid long after the relation of principal and agent should cease between the contracting parties to this letter; but so long as such premiums were paid (and it was admitted that the rise of sixty thousand dollars in such premiums were paid to the company after the removal of the plaintiff in error), the agent was to have 5 per cent of them.

This proposition was not controverted below, nor can it be here. In no other way did the plaintiff below seek to escape the force of

this proposition than by insisting that the circular of 1849 had become substituted, as the contract of the parties, for the letter of 1848, and that under the words of said circular, viz: "So long as you continue agent of the company," the right of the agent to the 5 per cent. on the renewal premiums was limited to the time of his continuing agent of the company.

The evidence touching usage, therefore, only goes to the point that what the contract provided was also the general usage, viz: that agents were to get the stipulated per centage on renewal premium's on policies secured to be taken through them, so long as the premiums were paid, whether the agent continued in the employ of the company or not.

This fact was established by the witness Harvey as the custom now (his knowledge not running back to 1848), and the legal presumption we insist is, that the fact was in 1848 what it is now, *prima facie* at least.

II. As to the change in the contract of 1848, which the defendant in error insists took place under the circular of 1849, we insist that—

In order to give to the circular this effect, a number of conclusions—some of them of law, some of them of fact—must concur. First of all, it must be found that it was *meant*—intended—to work that effect. Second, that Stagg so understood it. Third, If he did not—that is, if there is no proof that he did—then it must be found that the meaning contended for by defendants in error is so plain that the necessity of proving his understanding of it is obviated by the law. Fourth, finding the meaning of the circular to be what defendants in error claim, and that Stagg did so understand it, the question remains, Did his failure to reply to it—his silence in respect of it—commit him to the circular's new terms? In other words, is a case made in which silence gives consent?

It is not meant, in doubting the meaning of the circular, that there is any obscurity in its language; but to doubt its being meant for Mr. Stagg. He had already a contract with the company fixing the terms of his agency. He could hardly suppose it was meant to change those terms without some formal negotiation on the subject. He knew they could not be changed without his consent. If the

company wanted that, he might well presume they would address him directly upon the subject. He might have overlooked the little clause in question of the circular entirely; or, if it had caught his attention, he might have concluded that it was meant for subsequently employed agents. Certainly he might well have doubted its being meant for him, and so prudently have waited to hear from them directly on the subject at any time they might desire the new arrangement with him.

Now, if Stagg did not notice the clause referred to—that is, if he did not really apprehend it as a proposition directly made to him—how shall he be bound by it? It becomes, then, a main question in the case. Is it so plain that the circular was meant to bring about a change in the terms of Stagg's agency, that the law will impute to him a recognition of such intent? It must be altogether plain that such rules the object of the circular before it can be invested with such potency. Let it be kept in mind that it takes two, at least, to make a bargain, and just as many to *unmake* one. The use proposed to be made of this circular is to unmake a bargain of a year's standing. It is proposed to convert it (the circular) into a personal appeal—a direct personal address—to Mr. Stagg, saying: "Either give up your contract entitling you to an interest in renewals, or by which you claim such interest, or resign." It must amount to this, or it amounts to nothing. Now, if the company had been a military chief, and the plaintiff in error his subordinate, then, had the circular been issued as his order, properly dated at headquarters, and signed and countersigned, to prove its delivery, it would have been enough. But the Connecticut Life Insurance Company is possessed of no such authority as that. It is simply an artificial person with power to contract, etc. It had contracted with Mr. Stagg, and was possessed of no means of escaping its burdens, which are not common to natural persons. If the company were dissatisfied with its contract with Mr. Stagg, it should have addressed him directly on the subject, in the usual way of conducting a business correspondence. The clause referred to in the circular looks much like a trap to catch the unwary. And if the effect be allowed which is claimed for it, it will be because the court or the law springs the trap. The court will not do it, of course. If it is done, it must be done by the law.

But assuming, for the sake of the argument, the circular is the equivalent of a direct appeal in the usual mode of a commercial correspondence, proposing that Stagg accept of the new terms or resign, is his silence the equivalent of a direct and square acceptance of the new terms? We deny that it is. If A. has bought a horse of B., and obtained possession at the agreed price of two hundred dollars, would he be bound to take any notice whatever of a note from B. informing him that if he retained the horse he would expect five hundred dollars for him? Surely he would not. If an auctioneer had sold a hundred horses, and delivered them, or a hundred houses, and delivered them, could he impose new terms upon the purchasers through the instrumentality of a circular like this? Of course he could not. Well, Mr. Stagg, before and at the issuing and reception of the circular, had his contract with the company, and possession under it; and therein lies the defiant strength of his case. He was no more bound to answer a proposition from the company for new terms than was the company to answer a similar proposition from him. The utmost of his prerogative in that direction was to write to the company, saying: "Send me better terms, or I resign." The limits of the company's prerogative with him was a direct note, saying: "Accept harder terms, or we turn you out." It could not even say, "Accept the harder terms, or *resign*." If it had, he would not have been bound to resign. Nor would his failing to resign afford an argument that he had accepted the harder terms. He had, in that view, the right of continuing on under his old contract until the ax of removal fell. The company possessed no power to compel his resignation. The Government at Washington possesses no such power over its appointees in office. Its power is that of removal only. There is no such thing as compelling a man to resign.

No more has this company power to compel the resignation of its agents. It has power to remove them only, and that within the limits of their contracts of employment.

So we may say that, admitting the clause referred to in the circular was meant for Mr. Stagg, which we deny; that he understood it to be meant for him, which we deny; that he was bound to treat it as a direct proposition to accept the new terms or resign, which

we deny, it put no obligation upon him either of accepting the new terms or of resigning.

The company not being possessed of power to compel his resignation, but only to remove him, he might well wait to see if peradventure after all they would go so far as to turn him off. Possibly it might not. And so we arrive safely—satisfactorily at least—at the conclusion, that assuming Mr. Stagg, previously to the circular, to have been an agent in the employ of the company, upon terms giving him an interest in the renewals of policies of his own procuring, there is nothing in the circular nor derivable from it, considering it either as a trap designedly set for catching him, or as a method honestly devised by the company for notifying him and others of its agents similarly connected with it, that it meant thereafter to cut them off from all interest in a commission on these renewals, it will fail of its effect.

III. As to the bond referred to in defendant's (in error) brief, we cannot perceive what bearing it has on any issue involved in this cause. If intended to show that the letter of attorney of 1848 was revocable—that the agency held under it was held at the pleasure of the principal—we admit it; we could not question that. It would have been very unjust to revoke this power in 1849, when we were just beginning to get the business into paying condition after expending a year's work in developing it. Yet the naked power to revoke was undeniable. Our proposition, therefore, is not that the agency was not held *at the pleasure of the company*, but that, being so held, the company never revoked it until our removal in 1864—THAT IT DID NOT REVOKE IT BY THE CIRCULAR OF 1849.

It must be obvious that the question, whether "the duration of the agency was limited to the pleasure of the parties respectively," can have no relation to the right of the agent, after his agency ceased and so long as renewals were paid, to have the 5 per cent. of renewal premiums on policies secured through him.

IV. The counsel for defendant in error can have no support in the record for his statement, to-wit: "That the plaintiff in error so considered the matter, and so conformed his action in the premises, is apparent on the face of the account which he rendered to the defendant in error, which the latter read in evidence."

The record not only does not show that this account was rendered by the plaintiff in error to defendant in error, but it shows presumptively the very contrary—and in fact (to speak outside the record in reply) the very opposite was true. The items were selected, such as suited the company, from an account rendered by the agent. The record shows that the plaintiff in error admitted the correctness of the items charging him and the credits conceded to him, but not admitting the balance stated. Now, if this had been an account rendered by the plaintiff in error, why the necessity of such admission?

But suppose the account was rendered by plaintiff in error, what does his conduct in rendering it imply more than the performance of his duty under the letter of 1848 appointing him to the agency? Under that agency it was his plain duty to render accounts to his principal of his transactions in its behalf. No such conclusion, therefore, can be drawn from the account, even assuming it to have been rendered by plaintiff in error, as insisted on by the counsel.

JAS. C. MOODY,

Attorney for Plaintiff in Error.

Supreme Court of the United States.

No. 312.

HENRY STAGG, Plaintiff in Error,

vs.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Defendant in Error.

Brief of Defendant in Error, by JOHN M. KRUM.

This is an action of assumpsit on the general count for money had and received, and the plea is the general issue, with notice of set-off. [Record, pp. 3 and 7.]

The only questions of law in this case are raised by the ruling of the Court below upon the whole evidence heard in the case.

The Circuit Court in effect decided, 1st. That the compensation of Defendant for his services as soliciting agent of the Plaintiff was governed by *contract* and not by *usage;* 2d. That the *circular* of September 26th, 1849, was substituted as a new contract in place of that dated October 13th, 1848; 3d. That the duration of the Defendant's agency was limited by said contract to the pleasure of the Plaintiff or Defendant respectively.

That this ruling is right and in conformity with strict law is so apparent that argument is scarcely necessary to its demonstration.

First. The Plaintiff in Error in his notice filed with his plea, bases his claim to his set-off on an alleged *agreement* of the Defendant in Error to pay a commission of five per cent. on the premiums of all renewals of policies effected through his agency. [Record, p. 8.]

The defence in its inception was based on the theory that the claim to commissions on premiums for renewals of policies of insurance depended on an *express* agreement and not on *usage*.

That this was the theory of the defence at the trial is shown by the fact that the Plaintiff in Error read in evidence the circular of the Defendant in Error, dated October 13th, 1848. That he had been soliciting agent of the Defendant in Error was not questioned. The account read in evidence showing the several sums of money collected by the Plaintiff in Error, which was admitted by him to be correct, shows on its face the relation he held to the Defendant in Error at the time he collected and received the money sued for. If his compensation depended on *usage* why give in evidence the circular?

The circular itself has no bearing on the question of usage.

But admitting that it was competent for the Plaintiff in Error, under his notice, to show a *usage*, nevertheless he utterly failed to establish it.

The knowledge of the witness relied on to prove it did not extend to a period only about two and a half years *anterior* to the trial. [*Vide* Record, p. 17.]

By the second witness it was proposed to prove "*the same facts in substance in respect to usage*" that had been proved by the first witness. This of course was cumulative merely and did not strengthen the case.

Second. The Plaintiff in Error admitted that he *received and acted* on the circular read in evidence dated September 26th, 1849; that he had not received or forwarded to Defendant in Error any applications for policies prior to the last mentioned date, nor had any policies been issued on applications through him prior to that time. [*Vide* Record, pp. 16 and 23.]

The Plaintiff in Error *received and acted on* the circular of September 26th, 1849, consequently there is but one interpretation to be given to the conduct of the parties, viz: that they substituted the *last* circular in place of the former.

It was competent for the parties, even by parol to modify or change the terms of the circular or contract of October 13th, 1848. Have they not done so?

For the purposes of this case, we need only refer to one clause of the last circular, viz.:

"*For your services as above you will be allowed a Commission of ten per cent. on the first premium (cash and*

notes), and five per cent. on all subsequent renewal premiums so long as you continue the agent of the Company." [Vide Record, p. 21.]

The Plaintiff in error having "received and acted on" this circular, it must be regarded as the *contract* of the parties in respect to the services, rendered or to be rendered, and the compensation to be paid therefor.

That the Plaintiff in error so considered the matter and so conformed his action in the premises, is apparent on the face of the account which he rendered to the defendant in error, which the latter read in evidence. [Vide Record, pp. 13 and 14.]

On examination it will be seen that this account is rendered in conformity with the conditions and requirements of circular September 26th, 1849.

Thus the Plaintiff in error by his own conduct and acts, establishes and confirms what the Defendant in error alleges and what the Court below ruled, viz.: that the circular of September 26th, 1849, was substituted as a *new* contract in place of that dated October 13th, 1848.

Third. The remaining (and perhaps the most important) proposition to be considered, is whether the *duration* of the agency of the Plaintiff in error was *limited* to the pleasure of the parties respectively.

This proposition, if language has any force, is determined in favor of the Defendant in error, by the very terms of the circular of September 26th, and 1849, and the Bond of Plaintiff in error dated July 19th, 1858.

In the former writing the language is "*so long as you continue the agent of the Company.*" [*Vide* Record, p. 21.]

In the Bond the language is: "Whereas the above named Henry Stagg has been duly appointed by the directors of said Company their agent for the city of St. Louis, and its vicinity, State of Missouri, during *their pleasure.*" [*Vide* Record, p. 23.

Can language be plainer or more expressive?

After the date and receipt of the circular of September 26th, 1849, nearly *nine* years elapsed before the Plaintiff in Error entered into the Bond referred to above.

The money sued for in this case was collected and received by the Plaintiff in Error *after* he entered into this bond.

This is shown by Schedule A, filed with his notice of set-off, as well as by his admissions that he had received all the commissions he was entitled to up to June 1st, 1864. [*Vide* Record, pp. 9 and 14.]

Now is it not plain in view of the writings in evidence, as well as in view of the conduct of the Plaintiff in Error, that he was entitled to claim and demand commissions, &c., only so *long as he continued the agent of the Company*, and his continuance as such agent was *during the pleasure* of the Directors thereof.

From the evidence in the case it appears that the business was taken from the hands of the Plaintiff in Error June 1st, 1864, and he rendered no service after that time. But it does *not* appear that he objected to the withdrawal of the business or the termination of the agency, nor does it appear that he after that time held himself ready or that he offered to perform the duties of agent.

As it is not shown that the Plaintiff in Error either performed, offered to perform, or that he held himself ready to perform the duties of agent of the Insurance Company after June 1st, 1864, the legal presumption is that he acquiesced in his displacement.

An agent or employee must at least hold himself in readiness and offer to perform the service for which he was engaged before he can claim compensation where no service whatever has been rendered.

The judgment of the Court below, I maintain, should be affirmed.

The principles which underlie the decision of the Court below are elementary, and it is not considered necessary to quote authorities to support them.

JOHN M. KRUM,
Attorney for Defendant in Error.